

U.S. Department of Justice



Environment & Natural Resources Division

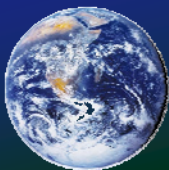


ENRD



ENRD

FY 2011



PERFORMANCE BUDGET
CONGRESSIONAL SUBMISSION



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[Information in text boxes is courtesy of Fish and Wildlife Service’s (FWS) Endangered Species Program website (<http://www.fws.gov/endangered/>) and the FWS’s publicly-accessible Threatened and Endangered Species System Online Database (TESS)]

I. Overview of the Environment and Natural Resources Division

A. Introduction:

Environment and Natural Resources Division (ENRD) Mission: ENRD's mandate is to enforce civil and criminal environmental laws and programs protecting the health, environment, and natural resources of the United States and to defend suits challenging those laws and programs. To accomplish this mission in FY 2011, the Division is requesting a total of \$119,310,000, including 486 positions, and 527 Full-Time Equivalents (FTE). This is a net budget increase in FY 2011 of \$4,572,000, 27 positions, (15 attorneys), and 14 FTE.

The additional resources requested in ENRD's FY 2011 Budget are needed to: (1) effectively defend the United States in the high-profile, high-stakes Indian **Tribal Trust** litigation; (2) expand and enhance the Division's **Civil and Criminal Environmental Enforcement** efforts; and (3) enhance the Division's **E-Discovery** capabilities. More details appear on page 9, Summary of Program Changes Section, and page 36, Program Increases by Item Section, contained in this submission.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: (<https://www.usdoj.gov/jmd/2011justification/>.)

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **California Condor** has been listed as an Endangered Species since 1967. These vulture-like creatures are among the largest flying birds in the world. Adults weigh more than 20 lbs. and have a wingspan of up to 10 feet. California Condors are opportunistic scavengers, feeding only on the carcasses of dead animals, including deer, cattle, and marine mammals such as whales and seals. A condor may eat up to 3 to 4 pounds at a time and may not need to feed again for several days.

B. Issues, Outcomes, and Strategies:

As the Nation's chief environmental litigator, ENRD supports the Justice Department's Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People, and Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the nation's natural resources and public lands. The Division defends suits challenging all of the foregoing laws, and fulfills the federal government's responsibility to litigate on behalf of Indian tribes and individual Indians. ENRD's legal successes protect the federal fisc, reduce harmful discharges into the air, water, and land, enable clean-up of contaminated waste sites, and ensure proper disposal of solid and hazardous waste.

In affirmative litigation, ENRD obtains redress for past violations harming the environment, ensures that violators of criminal statutes are appropriately punished, establishes credible deterrents against future violations of these laws, recoups federal funds spent to abate environmental contamination, and obtains money to restore or replace natural resources damaged by oil spills or the release of other hazardous substances into the environment. ENRD also ensures that the federal government receives appropriate royalties and income from activities on public lands and waters.

By vigorously prosecuting environmental criminals, ENRD spurs improvements in industry practice and greater environmental compliance. Additionally, the Division obtains penalties and fines against violators, thereby removing the economic benefits of non-compliance and leveling the playing field so that companies complying with environmental laws do not suffer competitive disadvantages.

In defensive litigation, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including litigation over water quality and watersheds, the management of public lands and natural resources, endangered species and sensitive habitats, and land acquisition and exchanges. The Division is increasingly called upon to defend Department of Defense training and operations necessary to military readiness and national defense.

ENRD defends the federal government in lawsuits alleging the United States has breached its trust responsibilities to Indian Tribes by failing to provide “full and complete” historical accountings of tribal trust funds and non-monetary trust resources, failing to administer properly tribal accounts that receive revenues from economic activity on Tribal lands, and failing to manage properly tribal non-monetary trust resources. There are currently 98 pending Tribal Trust cases filed by 114 Tribes in various U.S. District Courts (44 cases), in the Court of Federal Claims (51 cases), and in the Federal Circuit (3 cases). For these Tribal Trust cases, the Division is obligated to identify, locate, review, scan, manage, and produce over 400 million pages of documents relevant to Tribal Trust fund accounts, resources, and assets. The Tribal Trust litigation will continue in full force for the foreseeable future, with several trials expected in FY 2011.

A new area to which ENRD expects to devote resources in FY 2011 is Global Climate Change. Litigation related to climate change over the past few years has been primarily defensive in nature under the Clean Air Act (CAA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). Allegations that client agencies have failed to consider (or inadequately considered) greenhouse gas emissions or climate change impacts are increasingly being made in challenges to agency decision-making under these statutes.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Giant Kangaroo Rat** has been listed as an Endangered Species since 1987. The Giant Kangaroo Rat is the largest of more than 20 species in the genus "Dipodomys," a family which includes kangaroo rats, kangaroo mice and pocket mice. They are not really rats at all. And they are not really "giants" either. These small (about 6 inches long, not including a long tufted tail) rodents communicate with each other by stomping their feet on the ground. Natives of California, these creatures typically only live for 2-4 years.

C. Performance Challenges:

External Challenges

The Division has limited control over the filing of defensive cases, which make up the majority of our workload. Court schedules and deadlines drive the pace of work and attorney time devoted to these cases. ENRD's defensive caseload is expected to increase in FY 2011 as a result of numerous factors.

- In FY 2011, the Division anticipates that several **Tribal Trust** cases will go to trial. Additionally, we expect that the cases will continue to mature into more advanced stages of litigation, requiring extensive resources to acquire, review and produce documents, to take and defend depositions, and to respond to the discovery demands of over 100 Indian tribes.
- ENRD expects that our docket will continue to reflect more **Climate Change litigation** in FY 2011. Climate Change litigation has already required substantial division resources in recent years. The litigation thus far has been primarily defensive in nature, with the Division responding to allegations that client agencies have failed to consider greenhouse gas emissions or climate change impacts when making agency decisions under the Clean Air Act, the Endangered Species Act, and the National Environmental Policy Act.
- The Environment and Natural Resources Division continues to devote significant resources to condemnation proceedings along the U.S. border with Mexico, related to the **Secure Border Initiative** (SBI). In order to build the Southwest border fence, ENRD's Land Acquisition Section has been exercising the government's eminent domain powers (under the Fifth Amendment of the Constitution) to acquire hundreds of miles of privately-owned property on behalf of the Department of Homeland Security and the Army Corps of Engineers. We continue to file and litigate condemnation cases. Valuation litigation, which will proceed into FY 2011, is the most resource-intensive stage of these actions, and we have only just begun that process. This demanding project will continue for the foreseeable future.
- ENRD supports the defense and security missions of the Department of Defense and the Department of Homeland Security. From defending environmental challenges to critical training programs that ensure military preparedness, to acquiring strategic lands needed to fulfill the government's military and homeland security missions, ENRD makes a unique and important contribution to defense and national security while ensuring compliance with the country's environmental laws. The Division expects its **military readiness docket** – to include litigation to defend training missions and strategic

initiatives, expand military infrastructure, and defend chemical weapons demilitarization – to continue and expand in FY 2011.

- Beginning in FY 2010, and continuing into FY 2011, Indian and other **federal water rights adjudications** currently stayed for settlement negotiations are expected to resume. Water rights litigation primarily in the Western United States consumes a significant portion of the annual workload of ENRD's Natural Resources Section and Indian Resources Section.

ENRD expects to receive a number of civil and criminal environmental enforcement referrals from EPA concerning clean air, clean water and clean land for all Americans. As EPA has placed a substantial emphasis on environmental justice, we expect some of these cases to involve situations in which a disproportionate adverse environmental or human health effect on an identifiable low-income/minority community or federally-recognized tribe consistent with Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations"). In addition, the Division is reviewing its own cases to make sure that environmental justice is appropriately taken into account and advanced in its work. Accordingly, the Division will need to devote additional resources to ensure protection of the nation's air, water and other resources for all Americans under the Environmental Justice order and other applicable federal laws and regulations.

Prosecution of white collar environmental crimes and related corporate fraud continues to be an important objective for the Department. ENRD realized a number of legal victories in the area of white collar environmental crimes in FY 2009 (described in the Accomplishments section of this Performance Budget), and we foresee more investigative and litigative activity in FY 2011 and beyond.

ENRD must devote the majority of its appropriated resources to defensive work on behalf of federal agencies. When making decisions as to which cases merit funding, the Division must proceed, first and foremost, with such non-delegable, non-discretionary defensive litigation. The provision of additional resources -- for ENRD's Tribal Trust cases, for the Division's civil and criminal enforcement initiatives, and for E-Discovery -- will assist the Division in allocating resources to work on matters responsive to different aspects of Strategic Goal 2.7.

Internal Challenges

ENRD faces numerous challenges in balancing available personnel and resources against workload demands. ENRD's overwhelming internal challenge is to ensure sufficient attorney FTEs and dollars to carry out the increasing demands of our defensive workload.

One significant internal challenge involves maintaining adequate information technology resources for our workforce. Like other litigating components, ENRD must provide computer resources for our attorneys that meet the changing, increasingly technological demands of the legal industry. With the introduction of new technologies and new requirements – such as e-filing, on-line document repositories, electronic trials, extranet docketing systems, etc. – we need to continually provide our workforce with the necessary hardware and systems to accommodate these business process challenges.


One of the most significant information technology system challenges ENRD faces in FY 2011 is the development and implementation of the Department's Litigation Case Management System (LCMS). LCMS is a shared case management system for the Executive Office of United States Attorneys, the 93 United States Attorneys Offices, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, the Criminal Division, the Tax Division, and the Antitrust Division. This new, unified system is intended to provide accurate, timely, and useful data for all end users and managers across the seven Department of Justice litigating divisions. Implementation of LCMS is expected to be a resource-intensive initiative in FY 2011. Based on information provided by DOJ's Office of the Chief Information Officer (LCMS PMO), ENRD will be required to contribute significant personnel resources in FY 2011 and in subsequent years to implement and administer this required system. This endeavor will require the effort and attention of government employees and specialized expertise and supplemental labor from industry consultants and/or contractor resources.

ENRD expects to encounter additional significant internal challenges while developing and implementing other Department-mandated information technology systems in FY 2011. For example, the Division expects to begin planning, development and testing of the Department's Unified Financial Management System (UFMS) in FY 2011. This system will require sizable resource investments in the short term. Throughout FY 2011 we will devote government employee resources and contract personnel to LCMS, UFMS, and other required IT systems development and implementation projects.

With the requested resources for FY 2011, ENRD believes it can accommodate its foreseeable internal and external challenges.

To access the Exhibit 300 submission regarding information technology for ENRD and other DOJ components, please go to: (<http://www.usdoj.gov/jmd/2011justification/exhibit300/>.)

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Whooping Crane** has been listed as an Endangered Species since 1967. The Whooping Crane is the tallest North American bird, standing nearly 5 feet tall and weighing up to 20 lbs. These rare birds, which have an average lifespan of 22 to 24 years in the wild, are named after their call, which has been described as a shrill, bugle-like trumpeting (a "whooping"). Wild populations of whooping cranes utilize the Texas Gulf coast, New Mexico, and migration and staging areas through northeastern Montana, the western half of North Dakota, central South Dakota, Nebraska, Oklahoma, and east-central Texas. A non-migratory population exists in Florida.

D. Environmental Accountability

The Department's Environment and Natural Resources Division has undertaken a "Greening the Government" initiative in response to Executive Order 13423 (January 24, 2007), which requires all federal agencies to meet benchmarks for reductions in energy usage, water consumption, paper usage, solid waste generation, and other areas. Among other things, through the Executive Order, government agencies have been asked to reduce energy consumption by 30% by 2015.

Congress mandated compliance with this Executive Order in recent appropriations legislation (Omnibus Appropriations Act, Pub. L. 111-8, § 748 [2009]).

Earth Day at ENRD

Since 2004, ENRD has held an annual Earth Day service celebration at Marvin Gaye Park in Northeast Washington, D.C. In the past six years, thanks to t-shirt and mug sales, the Division has been able to help the park purchase over \$7,500 worth of trees and landscaping materials as part of the park revitalization event. ENRD also has devoted more than 2,500 hours of employee time to planting trees, removing trash, laying sod, and gardening. In both 2007 and 2008, ENRD received community service awards from the Department of Justice for its Earth Day event.

ENRD celebrated Earth Day 2009 on April 22, 2009 at Marvin Gaye Park again. Nearly 200 volunteers, including Attorney General Holder, Senator Durbin, staff from ENRD, and several other DOJ components – participated in the event. Working side by side with colleagues from the various DOJ components, the Washington Parks and People Foundation, the National Capital Planning Commission, the D.C. Department of the Environment, and the D.C. Department of Parks and Recreation, we planted 70 trees, spread mulch, removed invasive plants, and pulled trash and debris from the Watts Branch of the Anacostia River. Attorney General Holder and Senator Durbin planted a tree and dedicated a plaque in the memory of Dr. Martin Luther King, Jr.'s 1961 visit to the park.

Energy Use at ENRD

Through ENRD's Greening the Government committee, and through other management and staff efforts, ENRD has developed and promoted a set of Best Practices which will help the Division to minimize energy use. Our Best Practices entail such things as turning off lights (not only in offices, but also common areas, rest rooms, and hallways) when they are not needed; turning off computer monitors (or setting them to an energy saving mode) when not in the office; turning off other electronic devices when not in use; removing or disabling unnecessary light fixtures; encouraging use of stairs as opposed to elevators; and encouraging other energy efficient protocols.

ENRD also encourages employees to walk, bike and use public transportation when commuting to and from work. In addition to offering the traditional transit subsidy benefit (for employees who utilize public transportation and car pools), as of FY 2009, ENRD also provides commuter benefits to bicycle commuters. The program is made possible by the Bicycle Commuter Benefit Act, which was recently added to IRS Code Section 132(f).

Paper Use at ENRD

A major component of greening any office, especially a law office, is reviewing and revising how employees use paper. The average law office employee uses 10,000 sheets of paper each year, while ENRD employees use an average of 30,000 sheets per year. As a whole, our Division uses approximately 21 million sheets of paper per year. By cutting down on the amount of paper we use, and by recycling what we do use, we reduce the amount of waste going to

landfills and the number of trees cut down each year. Because of ENRD's commitments to reducing paper use, increasing recycling, and purchasing 100% post-consumer recycled paper, ENRD enrolled as a "best paper practices" partner in the ABA-EPA Law Office Climate Challenge.

Prior to FY 2009, all of the 8.5" x 11" paper purchased for the Division contained 30% post-consumer content (PCC). The Division now purchases 100% PCC 8.5" x 11" paper (unless it is unavailable), which means that no new trees are being consumed because of ENRD's normal paper use. Chlorine-free and 100% PCC paper is the most environmentally preferable paper product available today. When and where available, recycled paper is also used for specialized (color, oversized) paper requests, though this type of paper is often difficult to obtain.

As a result of ENRD's switch to 100% PCC paper, we have the potential to save annually approximately:

- 537,684 pounds of wood
- 679,890 gallons of water
- 1,298 million BTUs of energy
- 163,798 pounds of carbon emissions
- 87,307 pounds of solid waste

This is the equivalent of 1,861 trees that can provide oxygen for 931 people, enough water to take 39,528 eight-minute showers, enough energy to power an average American household for 5,204 days, the amount of carbon sequestered by 1,966 tree seedlings grown for 10 years, and enough solid waste to fill 3,011 thirty-two gallon garbage cans.

ENRD has recently developed and promoted Best Practices for paper use as well. These Best Practices instruct Division employees to do such environmentally conscientious things as: print and copy to double-sided output, think ("is this really necessary?") before printing, send and review files electronically (rather than in hard-copy format), use "print preview" to assure efficient printing, reuse paper and paper products, and load paper correctly into printers (to avoid jams and thus save paper).

Recycling at ENRD

By recycling products such as paper, cans, and bottles, we reduce the amount of solid waste going to landfills and make our consumption more sustainable. ENRD vigorously promotes a recycling program within the Division. ENRD also encourages employees to avoid consuming materials altogether, when possible. The Division's recycling advocacy program encourages employees to recycle at the workplace as well as at home. The Division works closely with building management and GSA's National Capital Recycling Program to achieve optimal success in our recycling efforts.

ENRD's Greening the Government committee has established and promoted a Best Practices policy for recycling. These Best Practices encourage employees to adhere to the following principles: don't take a bag (especially a plastic bag) if you don't need it; drink the free cold

filtered water provided in the break rooms instead of spending money on a new plastic bottle each time; use silverware or reuse plastic-ware; reuse folders and binders; remove clips for reuse before recycling documents; always put recyclables in the appropriate bins; recycle printer and fax toner cartridges; and recycle electronic equipment (ENRD sends all unused electronic equipment to UNICOR, which breaks them down into component parts to sell for re-use).

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)

Southern Resident **Killer Whales**, which reside along the California, Oregon and Washington state coastal areas, have been listed as an Endangered Species since February 2006. Killer Whales, which are actually members of the dolphin family, can grow to be 30 feet long and weigh 6 tons. The Killer Whale's large size and strength make them the fastest marine mammals on the planet, often reaching speeds in excess of 35mph. Killer Whales, like wolves, hunt in packs, and feed on various fish, sea mammals and birds. A typical Killer Whale eats about 500 lbs. of food per day.

II. Summary of Program Changes

Tribal Trust Litigation

The Division requests additional resources to defend the United States adequately against claims that the Government has: (1) failed to provide accountings of tribal trust funds; (2) failed to provide accountings of non-monetary tribal trust resources; (3) failed to manage trust funds properly; and (4) failed to manage trust resources properly. As of January 2010, 95 Tribal Trust cases have been filed by 114 Tribes in various U.S. District Courts and in the Court of Federal Claims, and 3 cases are on appeal in the Federal Circuit. Litigation efforts for this initiative are directly linked with the Department's Strategic Goal Two, Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction. Therefore, the Division requests an increase of \$2,744,000 for the Tribal Trust litigation as indicated below:

Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request	Page
Tribal Trust Litigation	10	8	5	\$994,000	\$1,750,000	\$2,744,000	36

Enforcing the Nation's Environmental Laws

The Division requests additional resources to protect America's health and preserve the nation's natural resources by bringing civil and criminal enforcement actions against violators of the nation's environmental protection laws. ENRD's environmental enforcement efforts are expected to increase significantly in FY 2011 in connection with six EPA initiatives: (1) improving the health of the Chesapeake Bay, (2) combating pollution from coal combustion waste, (3) cleaning up and preventing municipal sewer overflows, (4) bringing coal-fired power plants in compliance with the Clean Air Act (CAA), (5) stopping sham recycling of electronic waste, and (6) enforcing the laws to prevent illegal timber harvesting. ENRD will also continue to promote Environmental Justice through our casework, ensuring protection of the nation's air,

water and land for all Americans. Litigation efforts are directly linked with the Department's Strategic Goal Two, Objective 2.7. The Division requests an increase of \$958,000 for this civil environmental enforcement initiative as indicated below:

Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request	Page
Enforcing the Nation's Environmental Laws	8	5	4	\$708,000	\$250,000	\$958,000	42

Enhancing ENRD's E-Discovery Capabilities

ENRD requests additional funding to enhance the Division's document discovery in civil litigation to reach parity with the private sector. The Division seeks to meet the demands of electronic discovery by acquiring staff with technical expertise to perform a number of functions including: analyzing and providing advice on e-discovery and electronic document/data production issues; facilitating understanding between litigating components and client agency technical staff; participating in, or monitoring, Rule 26 conferences; and overseeing non-attorney support staff who process and handle discovery data. Utilization of staff with e-discovery expertise is also necessary to effectively manage and administer automated litigation support services to all Division cases. The Environment and Natural Resources Division requests an additional 9 positions (2 attorneys) and \$1,000,000 to support its emerging e-discovery responsibilities as indicated below:

Item	Pos.	Atty.	FTE	Personnel	Litigation Support	Total Request	Page
Enhance E-Discovery Capacity	9	2	5	\$1,000,000	-	\$1,000,000	48

III. Program Changes by Decision Unit to Strategic Goal

Item Name	Strategic Goal	Decision Unit	FTE	Dollars (\$\$\$)	Number and Type of Positions	
					Position Series	No. of Positions in Series
Tribal Trust Litigation	2.7	Civil Litigation	5	\$2,744	905 900-998	8 2
Enforcing the Nation's Environmental Laws	2.7	Civil Litigation	4	\$958	905 900-998 300-399	5 2 1
E-Discovery	2.7	Civil Litigation	5	\$1,000	905 2210	2 7

V. Decision Unit Justification

A. Environment and Natural Resources Division

<i>FY 2011 Request Summary</i>	Perm. Pos.	FTE	Amount (\$000)
2009 Enacted with Rescissions	445	499	103,093
2010 President's Budget	459	507	109,785
Adjustments to Base and Technical Adjustments	-	6	4,953
2011 Current Services	459	513	114,738
2011 Program Increases	27	14	4,702
2011 Program Offset			-130
2011 Request	486	527	119,310
Total Change 2010-2011	27	20	9,525

<i>Information Technology Breakout</i>	Perm. Pos.	FTE	Amount (\$000)
2009 Enacted with Rescissions	30	30	6,709
2009 Supplementals	-	-	-
2009 Enacted w/Rescissions and Supplementals	30	30	6,709
2010 President's Budget	30	30	7,311
Adjustments to Base and Technical Adjustments	-	-	445
2011 Current Services	30	30	7,756
2011 Program Increases	9	5	1,000
2011 Request	39	35	8,756
Total Change 2010-2011	9	5	1,445

1. Program Description

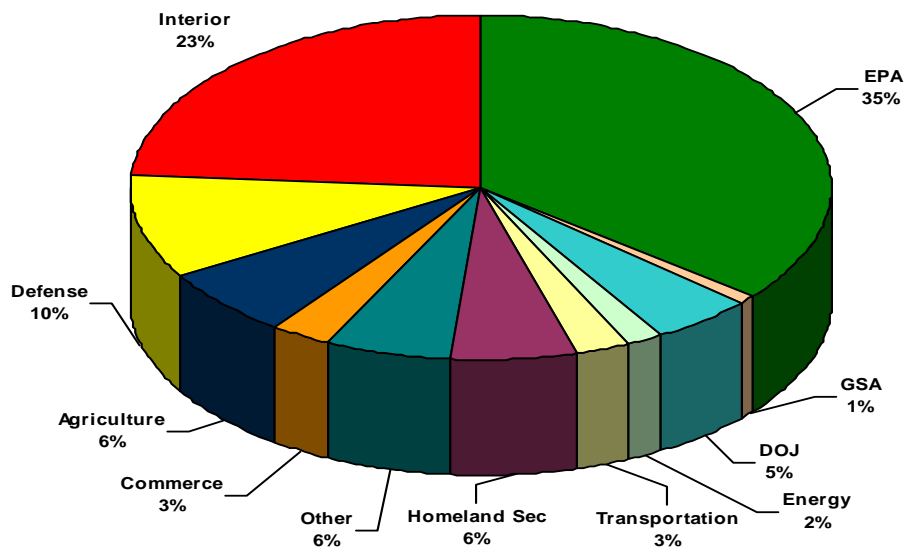
As stated in the Department of Justice Strategic Plan, ENRD works to:

- Investigate and prosecute environmental crimes, including both wildlife and pollution violations;
- Pursue cases against those who violate laws that protect public health, the environment, and natural resources;
- Defend U.S. interests against suits challenging statutes and agency actions;
- Develop constructive partnerships with other federal agencies, state and local governments, and interested parties to maximize environmental compliance and stewardship of natural resources;
- Act in accordance with United States trust responsibilities to Indian tribes and individual Indians in litigation involving the interests of Indians.

The Division focuses on both civil and criminal litigation regarding the defense and enforcement of environmental and natural resource laws and regulations, and represents many federal agencies in environmental litigation (e.g., the Environmental Protection Agency, Department of Agriculture, Department of the Interior, Department of Defense, and Department of Homeland Security.)

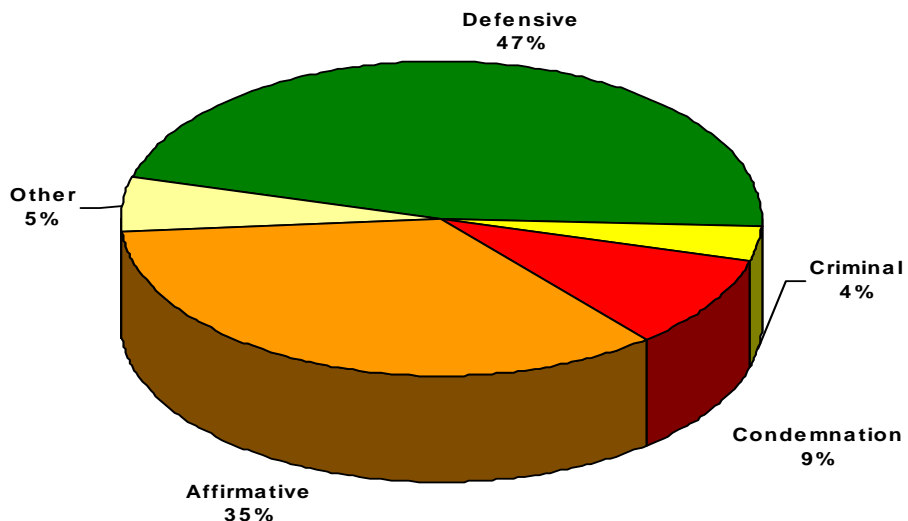
As the nation's chief environmental litigator, ENRD strives to obtain compliance with environmental and conservation statutes. To this end, we seek to obtain redress of past violations that harmed the environment, establish credible deterrence against future violations of these laws, recoup federal funds spent to abate environmental contamination, and obtain money to restore or replace natural resources damaged through oil spills or the release of other hazardous substances. The Division ensures illegal emissions are eliminated, leaks and hazardous wastes are cleaned up, and drinking water is safe. Our actions, in conjunction with the work of our client agencies, enhance the quality of the environment in the United States and the health and safety of its citizens.

ENRD's Cases/Matters Pending By Client Agency (end of FY 2009)



Civil litigating activities include cases where ENRD defends the United States in a broad range of litigation and enforces the nation's environmental laws. The majority of the Division's cases are defensive or non-discretionary in nature. They include claims alleging noncompliance with federal, state and local pollution control and natural resource laws. Civil litigating activities also involve the defense and enforcement of environmental statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Air Act (CAA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA).

ENRD's Cases/Matters Pending By Case Type (end of FY 2009)



The Division defends Fifth Amendment taking claims brought against the United States alleging that federal actions have resulted in the taking of private property without payment of just compensation, thereby requiring the United States to strike a balance between the interests of property owners, the needs of society, and the public fisc. ENRD also prosecutes eminent domain cases to acquire land for congressionally authorized purposes ranging from national defense to conservation and preservation. Furthermore, the Division assists in fulfillment of United States trust responsibilities to Indian Tribes. ENRD is heavily involved in defending lawsuits alleging the United States has breached trust responsibilities to Tribes by mismanaging Tribal natural resources and failing to properly administer accounts that receive revenues from economic activity on Tribal lands. The effectiveness of our defensive litigation is measured by percent of cases successfully resolved and savings to the federal fisc. These results can be reviewed in the Performance and Resources Table contained in this submission.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve issues such as fraud in the environmental testing industry, smuggling of protected species, exploitation and abuse of marine resources through illegal commercial fishing, and related criminal activity. ENRD enforces criminal statutes designed to punish those who pollute the nation's air and water; illegally store, transport and dispose of hazardous wastes; illegally transport hazardous materials; unlawfully deal in ozone-depleting substances; and lie to officials to cover up illegal conduct. The effectiveness of criminal litigation is measured by the percentage of cases successfully resolved. These results can also be reviewed in the Performance and Resources Table contained in this submission.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Alabama Red-Bellied Turtle**, which can be found living in both Alabama and Mississippi, has been listed as an Endangered Species since 1987. The Alabama Red-Bellied Turtle is a relatively large (10-12 inches) freshwater turtle, normally with an orange to reddish plastron and a prominent notch at the tip of the upper jaw, bordered on either side by a toothlike cusp. It feeds entirely on aquatic plants. Despite its endangered status, the Alabama Red-Belly is the official reptile of the state of Alabama.

ACCOMPLISHMENTS

In FY 2009, ENRD successfully concluded 762 from a total of 6,948 cases, matters and appeals. We recorded more than \$423 million in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) as a result of cases litigated by ENRD in FY 2009 totaled \$2.6 billion. Through our defensive litigation efforts in FY 2009, we avoided costs (claims) of more than \$508 million.

The Environment Division received 1,913 **new** cases and matters and filed 1,157 cases in FY 2009. ENRD achieved a favorable outcome in 95 percent of cases resolved. Below are notable successes from the Division's civil and criminal litigation dockets.

Civil Cases

- ***Enforcing Superfund Clean-up Obligations in Bankruptcy Cases***

In FY 2010, the Division secured the largest recovery ever of funds for hazardous waste cleanup and environmental restoration through the bankruptcy reorganization of American Smelting and Refining Company LLC, known as ASARCO. The Company and its predecessors operated in the mining, milling, and smelting industries for more than 100 years, leaving a legacy of environmental contamination at more than 80 sites in 19 states. ASARCO's 2005 bankruptcy is the largest environmental bankruptcy in history, in terms of both number of sites and the amount of the company's liability. The ASARCO reorganization plan includes total payments of \$1.79 billion to the United States, various trusts, and 14 different states. Much of the money paid to the U.S. will be placed in special accounts in the Superfund for EPA to pay for future cleanup work. It also will be placed into accounts at the Departments of Agriculture and the Interior to pay for natural resource restoration.

- ***Clean Air Act Power Plants Cases***

During the past year, ENRD continued to successfully litigate Clean Air Act (CAA) claims against operators of coal-fired electric power generating plants. These violations arise from companies engaging in major life extension projects on aging facilities without installing required state-of-the-art pollution controls, resulting in tens of millions of tons of excess air pollution that adversely affects the health of the elderly, the young, and asthma sufferers, degrades forests, damages waterways, and contaminates reservoirs.

ENRD recently settled a case with Kentucky Utilities (KU), a coal-fired electric utility, which agreed to pay a \$1.4 million civil penalty and spend approximately \$135 million on pollution controls. KU agreed to surrender the excess nitrogen oxide and sulfur dioxide allowances it will have after installing the pollution controls. Coal-fired power plants are allowed to emit sulfur dioxide and nitrogen oxides as allowances, which are granted under federal or state acid rain permits. Once surrendered, these allowances cannot be used again, thus removing the emissions from the environment permanently. The company will also spend approximately \$3 million on projects to benefit the environment.

ENRD also settled a case with Duke Energy, one of the largest electric power companies in the nation. Duke will spend approximately \$85 million to significantly reduce harmful air pollution at an Indiana power plant and pay a \$1.75 million civil penalty. The settlement also requires Duke to spend \$6.25 million on environmental mitigation projects. Duke must either repower two units at its Gallagher plant with natural gas or shut them down to remove all sulfur dioxide pollution. This natural gas repowering will also reduce other air pollutants, including nitrogen oxides, particulate matter, mercury, and carbon dioxide. Duke is required to install new pollution controls for sulfur dioxide at two other units at the plant. The work and projects that are required by the settlement will, when fully implemented, result in substantial improvements to the air quality for the communities that are the most heavily impacted by the Gallagher plant's emissions.

Duke Energy represents the 17th settlement secured by the federal government as part of a national enforcement initiative to control harmful emissions from coal-fired power plants under the Clean Air Act's new source review requirements. The total combined sulfur dioxide and nitrogen oxide emission reductions secured from these settlements will exceed 2 million tons each year once all the required pollution controls have been installed and implemented.

- ***Enforcement of the Clean Water Act Through Publicly Owned Sewer Cases***

Through its aggressive national enforcement program, ENRD continued to protect the nation's waterways by ensuring the integrity of municipal wastewater treatment systems. The Division reached an agreement with the City of Independence, Missouri, resolving CWA actions stemming from unlawful discharges of sewage. The City agreed to make major improvements to its sanitary sewer system, at an estimated cost of more than \$35 million, to eliminate unauthorized overflows of untreated sewage into the Missouri River each year. Independence will also pay a civil penalty of \$255,000 and will spend an additional \$450,000 on supplemental environmental projects designed to enhance the Missouri River watershed by improving storm water detention basins and stabilizing stream banks.

The Division reached an agreement with the city of Duluth, Minnesota, and the Western Lake Superior Sanitary District to make improvements to the area's sewer system, estimated to cost about \$130 million. Duluth and the District also have agreed to pay a combined penalty of \$400,000 to be equally divided between the United States and the state of Minnesota.

The City of Akron, Ohio, agreed to make expansions and improvements to its sewer system to reduce or eliminate sewage overflows that have long polluted the Cuyahoga River and its

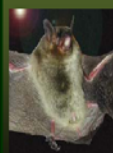
tributaries. As part of the settlement, the city is required to pay a \$500,000 civil penalty and to provide \$900,000 to a state supplemental environmental project.

- ***Controlling Contaminated Storm Water Run-off by Construction Companies***

In the past fiscal year, the Division fought for cleaner water by enforcing Clean Water Act provisions governing discharge of storm water. ENRD achieved a settlement with companies associated with construction of the Liberty Village housing development in Lynchburg, Virginia. The companies will pay a \$300,000 penalty and fund more than \$1 million in stream and wetlands restoration work. The settlement resolves allegations that the defendants discharged and/or controlled and directed the discharge of dredged and/or fill material, sediment, and other pollutants carried by storm water into waters of the United States during the construction of a housing development without required permits, and then in violation of the storm water permit after one was obtained.

ENRD also reached a settlement with Cooper Land Development, Inc., a luxury home development company headquartered in Rogers, Arkansas. The company agreed to pay a civil penalty of \$513,740 and implement a storm water compliance program at all of its current and future construction sites. The United States alleged Cooper Land Development violated the terms of permits issued by state environmental authorities in Missouri and West Virginia.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Gray Bat**, which flies in the central and south eastern United States, has been listed as an Endangered Species since 1976. It typically grows to a length of 5 inches and weighs approximately 12 grams, with a wingspan of approximately 12 inches. Gray Bats usually dwell in caves near rivers or reservoirs and eat primarily insects. After hunting and feeding near the water, bats return to their caves and hang upside down, which facilitates digestion of their recent meal.

- ***Addressing Air Pollution From Oil Refineries***

The Division also made progress in its national initiative to combat CAA violations within the petroleum refining industry. In separate settlements, two petroleum refiners agreed to spend a total of more than \$141 million in new air pollution controls at three refineries in Kansas and Wyoming. Frontier Refining and Frontier El Dorado Refining (Frontier) agreed to pay a civil penalty of \$1.23 million and spend approximately \$127 million in pollution control upgrades for alleged violations at its refineries in Cheyenne, Wyoming, and El Dorado, Kansas. Wyoming Refining Co. (WRC) agreed to pay a civil penalty of \$150,000 and spend approximately \$14 million in similar upgrades for alleged violations at its Newcastle, Wyoming, refinery. Each refinery will upgrade leak-detection and repair practices to reduce harmful emissions from pumps and valves, implement programs to minimize the number and severity of flaring events, and adopt new strategies for ensuring continued compliance with the Clean Air Act. Frontier agreed to implement environmentally-beneficial projects valued at more than \$1.3 million, including several projects to reduce volatile organic compound (VOC) emissions by installing dome covers on refinery storage tanks. VOC's are a prime ingredient in the formation of smog.

In another case, British Petroleum Products North America, Inc. (BP) agreed to spend more than \$161 million on pollution controls, enhanced maintenance and monitoring, and improved internal management practices to resolve Clean Air Act violations at its Texas City, Texas, refinery. The company will pay a \$12 million civil penalty and spend \$6 million on a supplemental project to reduce air pollution in Texas City to address its noncompliance with a 2001 consent decree and to accommodate Clean Air Act regulations requiring strict controls on benzene and benzene-containing wastes generated during petroleum refining operations. BP is also required to address CAA requirements limiting emissions of stratospheric ozone-depleting hydrochlorofluorocarbons. The company also agreed to improve its oversight and management of asbestos-containing wastes generated during routine renovation and demolition activities at the Texas City refinery.

- ***Reducing Air and Water Pollution at Other Diverse Facilities***

The Division reached a settlement with G-I Holdings Inc., addressing asbestos contamination at the largest chrysotile asbestos mine and mill in the country. The now-abandoned mine in Vermont, known as the Vermont Asbestos Group Mine Site (VAG Site) is the largest of 12 industrial sites across the country where G-I may have disposed of hazardous waste. The government alleges that the VAG Site has two towering piles of asbestos-containing mine and mill tailings, which are eroding offsite and adversely affecting downstream surface waters and wetlands. These piles also attract hikers, rock collectors, and ATV enthusiasts, causing exposure to airborne-asbestos. The settlement requires G-I to restrict public access, monitor air emissions from the piles, conduct dust suppression, if necessary, and provide support to EPA and Vermont for future sampling and monitoring. These tasks will take place over eight years, at a cost of up to \$7.75 million. G-I will also reimburse the federal and state governments for past and future cleanup costs at the VAG Site and related off-site contamination. G-I, now in Chapter 11 bankruptcy, will reimburse a portion of EPA and Vermont's cleanup costs and pay \$850,000 for damages to local wetlands and waterways contaminated by the site. G-I will contribute \$104,615 as its share of cleanup costs to resolve federal claims at nine other Superfund sites where its predecessors disposed of hazardous waste.

DuPont and Lucite International Inc. agreed to pay a \$2 million civil penalty to settle Clean Air Act violations at a sulfuric acid plant in Belle, West Virginia. The companies will pay \$1 million to the United States and \$1 million to the state of West Virginia and will voluntarily shut down a sulfuric acid manufacturing unit at the site on the Kanawha River. In the joint complaint, filed concurrently with the consent decree, the United States and West Virginia alleged that the companies violated the Clean Air Act by modifying their plant in 1996 without first obtaining pre-construction permits and installing required pollution control equipment.

In *U.S. v. Patriot Coal Corporation*, Patriot, one of the largest coal mining companies in the United States, agreed to pay a \$6.5 million civil penalty to settle violations of the Clean Water Act. The settlement includes the third largest penalty ever paid in a federal Clean Water Act case for discharge permit violations. From 2003 to 2007, Patriot and its subsidiaries allegedly discharged excess amounts of metals, sediment, and other pollutants into dozens of rivers and streams in West Virginia. Such pollutants can significantly harm water quality and aquatic life. Patriot has agreed to implement extensive measures to prevent future violations, including an

environmental management system, internal and third-party audits, a response system, and training. The company will also perform stream restoration projects and assessments of mining impacts on aquatic life.

- ***Protecting the Public Against Hazardous Waste***

The Division reached a major settlement with Shintech, Inc., and its subsidiary K-Bin, Inc., in which the companies agreed to spend \$4.8 million to comply with the Clean Air Act and the Resource Conservation and Recovery Act (RCRA) at their manufacturing facilities in Freeport, Texas. The companies will take steps to reduce emissions of ozone-depleting refrigerants by replacing refrigeration units, engage third-party audits, and increase training. Shintech will close facilities that were not designed to handle hazardous waste, implement audits and enhance its waste-water treatment system. The companies will pay a \$2.585 million civil penalty and perform \$4.7 million worth of supplemental environmental projects, including an appliance recycling program in Houston, and forest and wetlands additions to the Woods Preserve in Austin.

- ***Enhancing Pipeline Safety***

In *U.S. v. Magellan Ammonia Pipeline*, the Division reached an agreement with a pipeline company and two of its former operating firms to resolve violations of the Clean Water Act resulting from anhydrous ammonia spills in Nebraska and Kansas. As a result of the settlement, the companies will pay a \$3.65 million fine. The spills occurred in 2004, and caused significant fish kills in surrounding waterways. The operators of the pipeline system, Enterprise and MAPCO, violated the federal Comprehensive Environmental Response, Liability and Compensation Act (CERCLA) by failing to immediately notify the National Response Center about the spills. Magellan has agreed to spend an additional \$550,000 on improvements to prevent or minimize releases along selected segments of its pipeline system, establish a program to minimize third-party damage to the system, and make required improvements in employee training.

- ***Enforcement Under Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “the Superfund Act”)***

In FY 2009, the Environment and Natural Resources Division secured the commitment of responsible parties to clean up hazardous waste sites, at costs estimated in excess of \$299 million, and recovered approximately \$179 million for the Superfund to help finance future cleanups.

Examples of some of the major Superfund settlements achieved by the Division this year include a multi-party settlement involving the federal government, the state of New Jersey and approximately 300 parties to ensure that clean-up continues to be funded at the Combe Fill South Superfund Site Landfill (CFS) in Morris County, N.J. The CFS site is contaminated with both chemical wastes and refuse as a result of its use as a sanitary landfill from the early 1950s until it was closed in 1981. The defendants will pay at least \$61 million, plus additional interest

payments, for natural resource restoration projects; and purchase a \$27 million annuity paying \$900,000 a year for 30 years for the continued performance of the remedy.

The federal government, along with the state of Connecticut, reached three related settlements to ensure funding for environmental cleanup activities at the Solvents Recovery Service of New England (SRSNE) Superfund site, a solvent recycling and resale facility that disposed of solvent-laden sludge in open pits for 36 years. The settlements will allow cleanup work to proceed without further costs being borne by taxpayers. EPA will receive payments of more than \$6 million in reimbursement for the federal government's clean up costs. Settling parties under the three consent decrees will pay about \$200,000 to resolve federal natural resource damage claims and more than \$2 million to Connecticut for natural resource damage claims related to groundwater contamination. A group of 59 potentially responsible parties has agreed to perform the site-wide cleanup, estimated to cost approximately \$29 million.

- ***Tribal Trust Cases***

The extraordinarily complex and multifaceted Tribal Trust Cases command a large portion of ENRD's time and resources. The Division represents the United States in 98 cases brought by more than 100 Indian tribes demanding accountings and damages, and alleging breach of trust and other claims relating to funds and non-monetary assets (such as timber rights, oil and gas rights, grazing, mining, and other interests) on some 45 million acres of land. Many of these cases are in settlement negotiations and others are in the early stages of pre-trial preparation. The Division has enjoyed success in the past fiscal year in formally (i.e., via Alternative Dispute Resolution proceedings) and informally engaging with the tribes and has fairly balanced its duties to defend client programs with an obligation to make whole any tribes wronged by asset management practices. The Division has settled a handful of cases, had others dismissed on procedural grounds, and is prepared to proceed with discovery and trial in yet others.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Wood Bison or Wood Buffalo** is a distinct northern subspecies of the North American Bison. Its range includes primarily the western and northern Canadian provinces and territories. The Wood Bison was listed as an endangered species in 1970. These unique species of bison are among the largest in North America, with adult males often topping the scales at over 2,000 lbs. (one ton). One reason the Wood Bison is continuing to flirt with extinction is the increased hybridization with more common Plains Bison, which is diluting the genetic stock of the endangered species.

Criminal Cases

- ***Prosecuting Environmental Crimes***

Fleet Management Ltd., a Hong Kong-based ship management firm, pleaded guilty to a criminal violation of the Oil Pollution Act of 1990 for its role in negligently causing the discharge of more than 50,000 gallons of fuel oil into San Francisco Bay when its ship, the *Cosco Busan*, struck the San Francisco Bay Bridge in dense fog on November 7, 2007. The company also pleaded guilty to felony obstruction of justice and false statement charges for creating false and

forged documents after the crash at the direction of shore-based supervisors with intent to deceive the U.S. Coast Guard. Pending court approval, Fleet has agreed to pay a \$10 million criminal penalty. Of this amount, \$2 million will be devoted to fund marine environmental projects in San Francisco Bay. The plea agreement, should the court accept it, requires Fleet to implement a comprehensive compliance plan including training and voyage planning for ships engaged in trade in the United States. The pilot of the *Cosco Busan* was sentenced to 10 months in prison, one year of supervised release, and 200 hours of community service for his role in causing the collision and discharge of oil and deaths of migratory birds.

- ***Vessel Pollution Cases***

The Vessel Pollution Initiative is an ongoing, concentrated effort to detect, deter, and prosecute those who illegally discharge pollutants from ships into the oceans, coastal waters and inland waterways. The Division continues to have great success prosecuting such deliberate violations. Over the past 10 years, the criminal penalties imposed in vessel pollution cases have totaled more than \$200 million and responsible shipboard officers and shore-side officials have been sentenced to more than 17 years of incarceration. The initiative has resulted in a number of important criminal prosecutions of key segments of the commercial maritime industry, including cruise ships, container ships, tank vessels, and bulk cargo vessels.

In *U.S. v. STX Pan Ocean Co. Ltd.* (STX), the owner of the commercial cargo ship, *M/V Ocean Jade*, pleaded guilty to conspiring to falsify and falsifying records meant to ensure compliance with maritime pollution laws. The chief engineer ordered several crew members to dump oily waste directly overboard into the ocean, and he falsified entries in the ship's record book. STX was sentenced to a \$2 million fine, which includes a \$200,000 community service payment to the National Fish and Wildlife Foundation for projects related to the protection, restoration and enhancement of fish and wildlife habitat in the Tampa Bay area. STX has agreed to implement a detailed environmental compliance plan, which requires monitoring of its fleet-wide operations over the course of four years, training for crew members, and engineering alterations to protect gulf and ocean waters.

In *U.S. v. Consultores De Navegacion*, a Spanish company that operates the *M/T Nautilus*, an ocean-going chemical tanker ship, the company was sentenced to a fine of \$2.08 million for criminal violations related to the overboard discharge of oil-contaminated bilge waste, conspiracy, falsification of records, false statements, obstruction, and two violations of the Act to Prevent Pollution from Ships for failing to maintain an accurate oil record book.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Puerto Rican Boa Constrictor** was placed on the Endangered Species List in 1970. These unique snakes, indigenous to the island of Puerto Rico, grow to a maximum size of approximately seven feet. Observations of captive specimens suggest that under natural conditions the diet of sub-adults and adults consists of birds, small mammals, lizards and occasionally bats. The boa feeds by seizing the prey in its jaws, wrapping several coils around the victim, and then constricting until the prey has suffocated. The prey is then swallowed head first.

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- ***Protecting the Environment, Public Health, and Worker Safety***

In *United States v. Atlantic States Cast Iron Pipe Company*, the corporate defendant was sentenced to pay a fine of \$8 million for violations of environmental and worker safety laws as well as obstructing the federal investigation of its conduct. The company, a division of McWane, Inc., and its managers were found to have regularly discharged oil and other pollutants into the Delaware River, willfully polluted the air and rigged emissions tests, concealed serious worker injuries from health and safety inspectors, and maintained a dangerous workplace that contributed to multiple injuries, including severe burns, broken bones and amputations and the death of one employee. The company was also sentenced to four years of probation, during which its operation and adherence to environmental and worker health and safety regulations are subject to oversight by a court-appointed monitor. Four former Atlantic States managers received federal prison terms.

In *United States v. Watkins Street Project LLC*, the owner of a Chattanooga, Tennessee, salvage and demolition company, pleaded guilty to conspiring to violate the Clean Air Act's worker protection requirements for notification of EPA and the proper stripping, bagging, removal and disposal of asbestos. The owner faces up to five years in prison and a fine of up to \$250,000 or twice the gross gain or loss to the victims. Asbestos has been determined to cause lung cancer, asbestosis and mesothelioma, an invariably fatal disease. EPA has determined that there is no safe level of exposure to asbestos.

- ***Enforcing the Clean Water Act***

In *U.S. v. Johnson Mathey, Inc.*, the corporate defendant was sentenced to a \$3 million criminal fine for a felony violation of the Clean Water Act at its Salt Lake City precious metals refining facility. The case arose out of an Environmental Protection Agency (EPA) investigation into JMI's discharge monitoring reports required under the Clean Water Act. Employees at the facility submitted false samples for eventual reporting to the Central Valley Water Reclamation Facility to hide the true selenium concentration being discharged in the facility's wastewater. A portion of the monetary penalty will fund various environmental projects in Utah, including wildlife habitat acquisition and restoration, and research related to setting selenium standards and limits.

- ***Enforcing the Laws Against Overfishing***

In *U.S. v. Cannon Seafood*, several fisherman, a fish wholesale company, its owner, and an employee were sentenced to prison terms and ordered to pay restitution for illegally overfishing striped bass, also known as rockfish, in the Chesapeake Bay and Potomac River. The defendants conspired to falsely record weights and quantities of rockfish in violation of the Lacey Act, a federal law that prohibits individuals or corporations from creating false records for fish or wildlife, and from transporting, selling, or buying fish and wildlife harvested illegally.

- ***Enforcing the Laws Protecting Wildlife***

Exxon-Mobil Corporation pleaded guilty to violating the federal Migratory Bird Treaty Act (MBTA) in five states during the past five years and agreed to pay fines and community service payments totaling \$600,000. The company will implement an environmental compliance plan over the next three years aimed at preventing bird deaths at the company's facilities in the affected states. The company has already spent over \$2.5 million to begin implementation of the plan. The charges stem from the deaths of approximately 85 protected birds, including waterfowl, hawks and owls, at Exxon-Mobil drilling and production facilities in Colorado, Wyoming, Oklahoma, Texas and Kansas between 2004 and 2009. According to the charges and other information presented in court, most of the birds died after exposure to hydrocarbons in uncovered natural gas well reserve pits and waste water storage facilities.

In *U.S. v. Mark Harrison*, Mark L. Harrison, a resident of Southport, Florida, and Harrison International LLC, a Florida corporation, pleaded guilty to charges stemming from the illegal purchase and export of shark fins. Harrison and the company both pleaded guilty to Lacey Act violations for receiving shark fins that had not been properly reported, and for attempting to export shark fins from species that are prohibited from harvest under Florida state law. Harrison pleaded guilty to a Food and Drug Act violation for introducing food into interstate commerce that had been prepared, packed, or held under unsanitary conditions. The Lacey Act, enacted in 1900, is the first national wildlife law, and was passed to assist states in enforcing wildlife laws. It provides additional protection to fish, wildlife and plants that were taken, possessed, transported or sold in violation of state, tribal, foreign or U.S. law.

In *U.S. v. Gunther Wenzek*, the defendant pleaded guilty to smuggling coral into the United States in violation of international law. Customs agents seized two full containers – over 40 tons - of coral shipped by the defendant to a customer in Oregon. The removal of dead coral and live rock is of major concern for coral reefs, including those reefs protecting coastal communities from storms. These corals are the fundamental building blocks of the coral reef ecosystem. Unsustainable collection of coral frequently results in the loss of important nursery areas, feeding grounds, refuge for fish and invertebrates, and increased erosion of reef systems.

2. Performance and Resources Table

Performance and Resources Table (\$000's)											
Decision Unit/Program: Environment & Natural Resources Division - Consolidated Summary											
DOJ Strategic Goal/Objective: Strategic Goal II - Enforce Federal Laws and Represent the Rights and Interests of the American People. Objectives 2.7											
WORKLOAD/RESOURCES 1/		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Change		FY 2011 Request	
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,986		6,948		5,515		0		5,469	
	# of Cases Successfully Resolved/Success Rate	83%		762 95%		83%				83%	
CIVIL	1. Number of cases (active & closed)	5,283		6,230		4,878		0		4,859	
	2. Number of matters (active & closed)	290		323		256		0		232	
CRIMINAL	3. Number of cases (active & closed)	398		355		367		0		366	
	4. Number of matters (active & closed)	15		40		14		0		12	
DIVISION RESOURCES - Total Year Costs & FTE's (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total.)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		499	\$ 103,093	499	\$ 103,093	507	\$ 109,785	20	\$ 9,525	527	\$ 119,310
		[184]	[27,600]	[184]	[27,600]	[184]	[25,600]			[184]	[25,600]

Program Activity	PERFORMANCE/RESOURCES	FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Change		FY 2011 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CIVIL	TOTAL COSTS & FTE	449	\$ 92,584	449	\$ 92,584	456	\$ 98,807	20	\$ 9,525	476	\$ 108,332
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	4,913	370	4,114	2,116	3,221	1,657			3,202	1,657
	2. Number of matters active/closed	270	20	216	107	171	85			147	85
	EFFICIENCY MEASURES										
	1. Total Dollar Value Awarded per \$1 of Expenditures (Affirmative)		\$ 78		\$ 46		\$ 79				\$ 80
	2. Total Dollars Saved the Government per \$1 of Expenditures (Defensive)		\$ 19		\$ 27		\$ 20				\$ 21
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	no estimate	85%	338	98%	no estimate	85%	no estimate	no estimate	no estimate	85%
	2. Defensive cases successfully resolved	no estimate	75%	332	92%	no estimate	75%	no estimate	no estimate	no estimate	75%
	3. Penalties Awarded 2/ *	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Federal	no estimate	no estimate	488,254	123,773,330	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State	no estimate	no estimate	3,712,612	10,136,548	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	4. Clean-up Costs Awarded 4/										
	- CERCLA Federal Cost Recovery 5/	no estimate	no estimate	178,855,419	7,951,493	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Federal Injunctive Relief	no estimate	no estimate	272,498,252	2,313,737,516	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- CERCLA State Cost Recovery	no estimate	no estimate	16,079,683	518	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State Injunctive Relief	no estimate	no estimate	27,000,000	115,000	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	5. Supplemental Environmental Projects (SEPs) 6/										
	- Value of Federal SEPs	no estimate	no estimate	-	20,323,318	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Value of State SEPs	no estimate	no estimate	-	6,867,550	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	6. Costs Avoided (Saved the U.S. in Defense Cases) 7/	no estimate	no estimate	\$ -	\$ 1,723,270,672	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

Performance and Resources Table (Cont.)

Program Activity	PERFORMANCE/RESOURCES	FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Change		FY 2011 Request	
CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	TOTAL COSTS & FTE	50	\$ 10,509	50	\$ 10,509	51	\$ 10,978			51	\$ 10,978
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	370	28	257	98	266	101			265	101
	2. Number of matters active/closed	14	1	33	7	11	3			9	3
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	no estimate	90%	92	91%	no estimate	90%	no estimate	no estimate	no estimate	90%
	2. Dollars Awarded	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Fines 8/	no estimate	no estimate	\$ -	\$ 72,858,992	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Restitution	no estimate	no estimate	-	2,788,319	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Community Service Funds 9/	no estimate	no estimate	-	7,150,982	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	3. Criminal Environmental Compliance Plan 10/	no estimate	no estimate	\$ -	\$ -	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

Data Definition, Validation, Verification, and Limitations:

1/ A matter is defined as "an issue requiring attorney time (i.e. congressional & legislative inquiries, Freedom of Information Act (FOIA) inquiries, notice of intent to sue, or policy issues)."

Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date.

2/ Penalties Awarded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars awarded, Attorneys' Fees, and Royalties paid in cases involving the use of U.S. mineral lands.

3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this f

4/ Cost recovery is awarded to federal & state governments for reimbursement of the clean-up of sites contaminated with hazardous substances. Injunctive relief is estimated clean-up costs for contaminated sites which are court ordered to be completed by

5/ Monies paid by the Federal Government for its share of clean-up costs of Superfund sites have been excluded.

6/ Supplemental Environmental Projects (SEP) are environmentally beneficial projects that defendants are ordered to perform by the court (i.e. a factory installing a device to reduce the release of pollutants into the environment)

7/ Costs Avoided is the difference between the amount for which the government is sued, and the amount actually paid to plaintiffs.

8/ Includes Special Assessments, Reimbursement of Court Costs and Attorneys' Fees, and Asset Forfeitures.

9/ Community Service Funds represents actions which benefit the environment and local community that defendants are ordered to complete in addition to any other sentence.

10/ Criminal Environmental Compliance Plans are plans that may vary in detail, usually imposed on organizational defendants as conditions of probation at sentencing, that set out various actions that defendants must undertake in an effort to bring them into and keep them in compliance.

Data Collection & Storage: The majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).

Data Validation and Verification: The division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts.

Data does not include United States Attorney (USA) exclusive cases

Additional Explanation for Targets, Program Changes, and Program Requests

* In accordance with Department guidance, estimates of performance are not projected for the noted categories.

Performance Measure Table

PERFORMANCE MEASURE TABLE													
Decision Unit: Environment and Natural Resources Division													
FY 2001 through FY 2002 includes EOUSA statistics; FY 2003 through FY 2011 are ENRD only.													
Performance Report and Performance Plan Targets		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target
EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)			\$58*	\$87	\$171	\$75	\$117	\$157	\$78	\$46	\$79	\$80
EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)				\$16*	\$15	\$14	\$25	\$51	\$19	\$27	\$20	\$21
OUTCOME Measure	Civil affirmative cases successfully resolved	93%	94%	97%	96%	95%	97%	97%	99%	85%	97%	85%	85%
OUTCOME Measure	Civil defensive cases successfully resolved	92%	89%	91%	95%	92%	93%	92%	95%	75%	96%	75%	75%
OUTCOME Measure	Criminal cases successfully resolved	85%	91%	96%	95%	90%	94%	94%	95%	90%	91%	90%	90%

3. Performance, Resources, and Strategies

The Environment and Natural Resources Division contributes to the Justice Department's Strategic Goal Two: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People; and, more specifically, Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction. The Division focuses on both civil and criminal litigation within this strategic objective. An explanation by litigating activity follows.

Criminal Litigating Activities

A. Performance Plan and Report for Outcomes

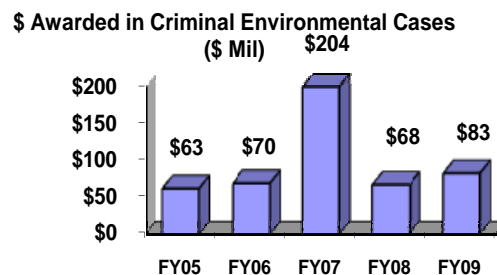
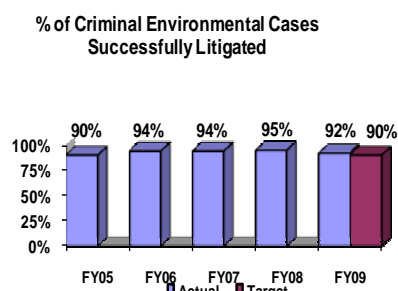
Vigorous prosecution remains the cornerstone of the Department's integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), seriously affected public health, or inflicted economic damage on consumers or law-abiding competitors. The Department's environmental protection efforts depend on a strong and credible criminal program to prosecute and deter future wrongdoing. Highly publicized prosecutions and tougher sentencing for environmental criminals are spurring improvements in industry practice and greater environmental compliance. Working together with federal, state and local law enforcement, the Department is meeting the challenges of increased referrals and more complex criminal cases through training of agents, officers and prosecutors, outreach programs, and domestic and international cooperation.

Performance Results

I. Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved

❖ *FY 2009 Target: 90%*

❖ *FY 2009 Actual: 92%*



Data Collection and Storage: A majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS). Similarly, EOUSA data are extracted from their CMS.

Data Validation and Verification: The Division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the Division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts.

❖ ***FY 2009 ENRD Resources Expended: \$10.4 million***

Discussion: FY 2009 proved to be a very strong year for criminal enforcement in ENRD's Environmental Crimes Section (ECS). Through the end of the fiscal year, the Environmental Crimes Section successfully prosecuted 85 defendants, achieving a 92% success rate, and imposing criminal fines and penalties totaling over \$82 million.

The Division's many successes include vessel pollution cases, criminal prosecutions of federal wildlife laws and prosecutions of Clean Water Act violations. For example, in *United States v. HPI Products Inc.*, a Missouri pesticide company was found to have disposed of pesticide waste water down the sewers of the city of St. Joseph. Pesticides and waste that were not dumped were improperly stored. The president of the company was sentenced to prison, home confinement, and a \$100,000 fine for a felony violation of the Clean Water Act.

FY 2009 Performance Plan Evaluation: We exceeded our original goal by 2 percent for FY 2009.

FY 2010/2011 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2010 and FY 2011. ENRD targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for "easy" wins solely to meet higher targets. Such an approach would do a disservice to the public by steering litigation away from more complicated problems facing the country's environment and natural resources.

Public Benefit: The Division continues to produce successful criminal prosecutions relating to environmental statutes. These successes ensure compliance with the law and lead to specific improvements in the quality of the environment of the United States, and the health and safety of its citizens. Additionally, ENRD has had numerous successes in prosecuting vessels for illegally disposing of hazardous materials into United States waterways. These successes have improved the quality of our waterways and promoted compliance with proper disposition of hazardous materials. Also, the Division has successfully prosecuted numerous companies for violations of environmental laws which endangered their workers. Our successes lead to safer workplaces and fewer lives lost to hazardous conditions.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Palos Verdes Blue Butterfly** is claimed to be the world's rarest butterfly. Its habitat is limited to the southern slope of the Palos Verdes Peninsula in Southwest Los Angeles County, California. The Palos Verdes Blue Butterfly was listed under the Endangered Species Act in 1980. The species was thought to be extinct in 1983, following development on the Palos Verdes Peninsula; however, the butterfly was rediscovered near a military fuel distribution center on the Peninsula in 1994.

II. Performance Measure - \$ Awarded in Criminal Environmental Cases

- ❖ ***FY 2009 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***

❖ ***FY 2009 Actual: \$82.8 million***

Discussion: Successes in FY 2009 include a number of Vessel Pollution cases, wildlife prosecutions, and criminal violations of both the Clean Air Act (CAA) and Clean Water Act (CWA). Both the depth and breadth of successes in the area of criminal monetary impositions in FY 2009 were impressive. In the Vessel Pollution cases alone, ENRD cases were responsible for over \$6.5 million in federal criminal penalties.

ENRD won over \$82 million in criminal monetary penalties in FY 2009. The Division also won several worker safety cases, such as a major OSHA case against Tyson Foods, as well as plant and animal smuggling cases, and hazardous materials cases, which have resulted in significant criminal monetary penalties in the past fiscal year.

FY 2010/2011 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2010 and FY 2011 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually, but our goal is to improve overall performance over a 5-year span.

Public Benefit: The Division continues to obtain criminal fines from violators, thereby removing economic benefits of non-compliance and leveling the playing field for law-abiding companies. Our prosecution efforts deter others from committing crimes and promote adherence to environmental and natural resource laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations and improve the quality of the United States' waterways, airways, land, and wildlife, thereby enhancing public health and safety.

B. Strategies to Accomplish Outcomes

The Division will continue efforts to obtain convictions and to deter environmental crimes through initiatives focused on vessel pollution, illegal timber harvesting, laboratory fraud, chlorofluorocarbon (CFC) smuggling, wildlife smuggling, transportation of hazardous materials, and worker safety. ENRD will also continue to prosecute international trafficking of protected species of fish, wildlife, and plants with a host of international treaty partners.

Illegal international trade in wildlife is second in size only to the illegal drug trade, and our criminal prosecutors work directly on these cases, as well as assist United States Attorneys Offices and share ENRD expertise nationwide with state and federal prosecutors and investigators. We will focus on interstate trafficking and poaching cases on federal lands, and seek to ensure that wildlife conservation laws are applied uniformly and enforced across the country, seeking consistency in these criminal prosecutions and a vigorous enforcement program that serves as an international role model.

ENRD has partnered with other federal agencies, such as EPA, to pursue litigation against criminal violators of our nation's environmental policies. Egregious offenders are being

brought to justice daily. The Division has worked collaboratively to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations, ENRD is forcing compliance and discouraging continued disregard for public health.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Florida Key Deer** has been listed as an endangered species under the ESA since 1967. They are a small species of deer – measuring about thirty inches tall at the shoulders and weighing about 50 lbs. – indigenous to the Florida Keys. They swim between islands in the Keys. Similar to the Key Deer's cousin, the American White-Tail, Key Deer live in close proximity to humans. Unlike, White-Tails, however, the Key Deer show relatively little natural fear of humans. The Key Deer are believed to have first arrived on the Florida Keys by a glacial land bridge which was present during the last ice age.

Civil Litigating Activities

A. Performance Plan and Report for Outcomes

The Department enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

Performance Results

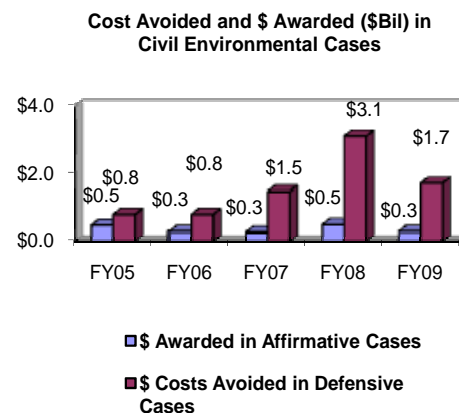
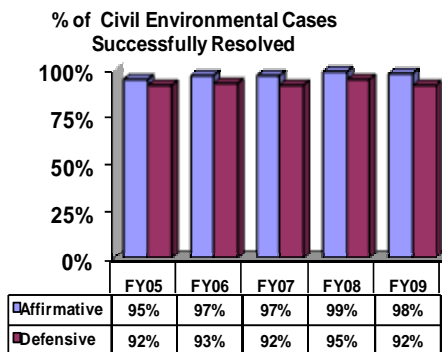
I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved

❖ **FY 2009 Target:**
85% *Affirmative*; 75% *Defensive*

❖ **FY 2009 Actual:**
98% *Affirmative*; 92% *Defensive*

Discussion: In FY 2009, the Division obtained more than \$2.6 billion in injunctive relief, through litigation or judicially approved consent decrees, that will ensure that harmful sediments are removed from rivers, state-of-the-art pollution control devices are added to factories to provide cleaner air, sewage discharges are eliminated, and damaged land and water aquifers are restored.

ENRD also worked successfully to ensure the integrity of municipal wastewater treatment systems. Each year, hundreds of billions of gallons of untreated sewage are discharged into the nation's waters from municipal wastewater treatment systems that are overwhelmed by weather conditions they are not adequate to handle. This past year, the Division reached settlements with several cities, including Hampton Roads, Virginia, and Jeffersonville, Indiana, that will collectively provide millions of dollars to bring these systems into compliance with the Clean Water Act. These settlements will ultimately reduce the volume of untreated sewage discharges by tens of billions of gallons. The Division also protected the nation's waters



Data Collection and Storage: A majority of the performance data submitted by ENRD is generated from the Division's Case Management System (CMS).

Data Validation and Verification: The Division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The systems data is constantly being monitored by the Division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts

and wetlands from illegal fill through favorable settlements of Clean Water Act enforcement actions.

ENRD realized a number of key civil enforcement victories in FY 2009. We won 98% of our civil affirmative and 92% of our civil defensive cases. Among our many judicial victories was a case against one of the largest coal mining companies in the United States. The company agreed to pay a \$6.5 million civil penalty to settle violations of the Clean Water Act. The settlement represents the third largest penalty ever paid in a federal Clean Water Act case for discharge permit violations. In addition, the coal company agreed to extensive measures designed to ensure Clean Water Act compliance at several mines in the eastern U.S.

FY 2009 Performance Plan: We exceeded our Affirmative and Defensive goals by 13 percent and 17 percent, respectively.

FY 2010/2011 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent Affirmative and 75 percent Defensive (average of 80%) for FY 2010 and FY 2011. ENRD's targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against easy targets solely to meet an "ambitious" goal. This sort of easy approach would do a disservice to the public by steering litigation away from more difficult problems facing the country's environment and natural resources. Eight years of data demonstrate that our targets are set at achievable levels and do not deter high performance.

The successes described in the "Accomplishments" section of this document demonstrate the Division's effectiveness at defending the nation's environmental laws. By receiving our requested funding in FY 2011, ENRD hopes to maintain our affirmative success rates while also effectively defending the United States. If ENRD cannot offer a strong defense, the Executive Branch's ability to enforce regulatory compliance or defend policy challenges may be seriously impaired. For example, the Division's efforts in the realm of Indian Tribal Trust litigation have been successful to date. However, if ENRD is forced to fully litigate these cases with limited resources, the resulting impact would be delays in resolution and unnecessary expense against the federal coffers.

Public Benefit: The success of the Department ensures the correction of pollution control deficiencies, reduction of harmful discharges into the air, water, and land, clean-up of chemical releases, abandoned waste, and proper disposal of solid and hazardous waste. In addition, the Department's enforcement efforts help ensure military preparedness, safeguard the quality of the environment in the United States, and protect the health and safety of its citizens.

II. Performance Measure - Costs Avoided and \$ Awarded in Civil Environmental Cases

- ❖ ***FY 2009 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2009 Actual: \$1.723 billion avoided; \$299 million awarded***

Discussion: The Division had several important civil litigation successes in FY 2009 concerning cases seeking civil penalties and other monetary recoveries. During the past fiscal year, the Division continued to successfully litigate Clean Air Act (CAA) claims against operators of coal-fired electric power generating plants. These types of violations, litigated out of ENRD's Environmental Enforcement Section (EES), arise from companies engaging in major life extension projects on their facilities without installing required state-of-the-art pollution controls. The resulting tens of millions of tons of excess air pollution has adversely affected human health, degraded forests, damaged waterways, and contaminated reservoirs.

In FY 2009, ENRD avoided over \$1.7 billion in claims against the federal government; and we won approximately \$299 million in civil environmental fines, penalties and other monetary impositions. Among the many Division victories in FY 2009, BP Products North America, Inc. has agreed to spend more than \$161 million on pollution controls, enhanced maintenance and monitoring, and improved internal management practices to resolve Clean Air Act violations at its Texas City, Texas facility. The company will also pay a \$12 million civil penalty and spend \$6 million on a supplemental project to reduce air pollution in Texas City.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Jaguar**, the third-largest feline (after the tiger and lion) in the world, is the only panther species found in the Americas. Listed under the ESA in 1972, these large cats are found in New Mexico and Arizona, as well as in Mexico and Central America. These strong, heavy-bodied, big-headed cats typically reside in wooded areas, including rainforests, and enjoy water (they are good swimmers). Jaguars are obligate carnivores, feeding only on meat, with a diet consisting largely of deer, foxes, snakes, frogs, mice, birds, fish, sloths, monkeys, and turtles.

FY 2010/2011 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY's 2010 through 2011 are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation, judicial calendars, etc. The performance of the Division tends to occur in peaks and valleys when large cases are decided. Therefore, we do not project annually, but our goal is to improve overall performance in a 5-year span.

III. Efficiency Measures

1) Total Dollar Value Awarded per \$1 Expenditures [Affirmative]

2) Total Dollars Saved the Government per \$1 Expenditures [Defensive]

❖ ***FY 2009 Target: \$78 awarded; \$19 saved***

❖ ***FY 2009 Actual:: \$46 awarded; \$27 saved***

Discussion: The Division had a commendable FY 2009 in its efforts to secure commitments by polluters to take action to remedy their violations of the nation's environmental laws. Actions taken by the Division in Federal courts resulted in over \$2.6 billion in settlements and court ordered injunctive relief. Additionally, the Division saved the government more than \$1.7 billion in defensive litigation. These successes and the Division's enforcement work have produced significant gains for the public fisc, public health, and the environment. The Division routinely saves the American taxpayers hundreds of millions of dollars each year – many times the Division's annual budget. Accordingly, in FY 2009, ENRD exceeded its ambitious performance goal of total dollars saved the government per \$1 expenditures. We anticipate similar success in FY 2010 and FY 2011.

FY 2010/2011 Performance Plan: Considering the exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands, the Division has continued to establish ambitious targets through FY 2011. The out-year performance goals were set at approximate target levels. The Division will monitor future year performance levels and make the necessary adjustments so that targets reflect actual performance levels. The Division anticipates continued successes through vigorous enforcement efforts which generally will produce settlements and significant gains for the public and the public fisc.

Public Benefit: The Division's efforts to defend federal programs, ensure compliance with environmental and natural resource statutes, win civil penalties, recoup federal funds spent to abate environmental contamination, ensure military preparedness, and ensure the safety and security of our water supply, demonstrate that the United States' environmental laws and regulations are being vigorously enforced. Polluters who violate these laws are not allowed to gain an unfair economic advantage over law-abiding companies. The deterrent effect of the Division's work encourages voluntary compliance with environmental and natural resource laws, thereby improving the environment, the quality of our natural resources, and the safety and health of United States citizens.

B. Strategies to Accomplish Outcomes

As our environment changes, so do the actions we take to preserve the health and life of those residing within the borders of the United States. Environmental groups and other interested parties challenge Administration policies every year. ENRD is responsible for defending federal agencies carrying out Administration policies every day. The Division has realized some remarkable successes to date. In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our limited resources. ENRD has adopted a policy of "porosity" whereby specialized attorneys are provided an opportunity to work on cases outside of their expertise to gain perspective and depth. This policy has resulted in more flexibility to shift workloads between attorneys when they become overburdened. Although cross-training staff grows our workforce's skills and abilities, it does not address long-term caseload issues.

The Division works collaboratively with client agencies towards adjudications, mediations, alternative dispute resolution (ADR), and settlements. These alternative methods of resolution are less contentious and save the government expenses associated with full-blown litigation.

Water rights adjudications, reclamations, and inverse takings cases are typically handled in settlement mode versus litigation mode. Settlements have the best outcome, and reach the largest number of people. In order to continue achieving successful settlements, ENRD must remain committed to collaborative negotiations with all interested parties. If a policy shift occurs, ENRD will be forced to take a more aggressive litigation stance, which would be costly without demonstrating added value for the Federal Government.

The Division's Environmental Enforcement Section (EES) is turning its attention to toxic air pollutants, mineral processing plant violations of RCRA, and industry practices that result in toxic emissions in violation of the Clean Air Act. EPA has been performing inspections of industries previously protected under the Bevel Amendments, and no longer exempts companies from the statutory requirements. To date, EPA has found 100 percent non-compliance in these inspections. Numerous resulting case referrals are expected, with ENRD prosecuting as many as our resources will allow.

C. Results of Program Assessments

During FY 2005, the Division's program effectiveness was assessed by the Office of Management and Budget (OMB) along with five other litigating components (Antitrust, Civil Division, Criminal Division, Civil Rights Division, and Tax Division), collectively named the General Legal Activities (GLA) Program. There were no adverse findings at the end of the assessment. Moreover, the assessment concluded that:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the U.S. Attorneys Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

Additionally, to exhibit continual improvement of business practices, the Program will perform these follow-up actions:

- Seek regular, independent evaluations of the Program's effectiveness at resolving cases in favor of the government;
- Establish a leadership training and mentoring program to continue improving the quality of the program's management; and

- Work with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

The recent actions initiated in FY 2008, but not yet completed, are as follows:

- The Department has reached out to the Federal Consulting Group (FCG) at the Department of Treasury to find inexpensive ways to develop an independent evaluation system. The FCG assists federal agencies in building an organization's program evaluation and performance measurement capacity. The FCG provided numerous suggestions, including asking local universities to review our programs. The Department will begin reaching out to universities to see if this is feasible.
- Each of the litigating components has developed a leadership training and/or mentoring program, or is in the process of developing one. Over the course of the past fiscal year, the litigating components trained 103 attorneys and 67 non-attorneys after conducting 6 training sessions. Additionally, 15 new employees are enrolled in a mentoring program.
- Development of LCMS continues towards deployment. Testing of the core application is nearing completion along with several application interfaces and operational reports. Stage 1 is on track to deploy to 4 USAOs in FY 2010. Requirements definition for Stage 2 and Stage 3 will be done simultaneously to maximize the standardization between divisions and reduce the amount of stove-pipe development. Stage 2 and 3 planning continues in FY 2010 and FY 2011 with deployment targeted for shortly thereafter.

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Attwater's Greater Prairie Chicken** is a wild fowl, indigenous to southwest Texas, and listed under the Endangered Species Act since 1967. These 15-20 inch long chickens have a unique large orange air sack on the side of their necks (used to attract mates). A century ago, over a million Attwater's Prairie Chickens graced the Texas and Louisiana Gulf coast. Today, an estimated 200-300 survive in the wild. There is a small breeding colony on the grounds of NASA's Johnson Space Center near Clear Lake, Texas.

VI. Program Increases by Item

A. Tribal Trust Litigation

Item Name:	Tribal Trust Litigation
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>Natural Resources Section (NRS)</i>
Component Ranking of Item:	<u>1</u> of <u>3</u>
Program Increase:	Positions <u>10</u> , FTE <u>5</u> , Litigation Support <u>\$1.75 million</u> , Total Dollars <u>\$2,744,000</u>

Description of Item

ENRD is requesting 10 positions (8 attorneys), 5 FTEs, and \$2,744,000 to defend the United States in the high-profile, high-stakes Indian Tribal Trust litigation.

As of January, 2010, there are 98 Tribal Trust cases, filed by 114 Tribes, pending in various United States District Courts (44 cases), in the United States Court of Federal Claims (CFC) (51 cases), and in the United States Court of Appeals for the Federal Circuit (3 cases). Thus far, through several means, including motions practice and settlements, ENRD has been able to reduce the number of Tribal Trust cases pending in federal district court and the CFC, from a historic high of 103 cases in FY 2007 to the present number. Further, ENRD has defeated attempts to certify one of the district court cases as class action, which, if successful, would have added over 130 additional Tribes as plaintiffs.

The Tribes assert essentially four major claims in the Tribal Trust cases: (1) failure to provide accountings of tribal trust funds; (2) failure to provide accountings of non-monetary tribal trust resources; (3) failure to manage trust funds properly; and (4) failure to manage trust resources properly.

The Government holds and manages approximately 56 million acres of land and resources in trust for the benefit of individual Indians and Tribes. Of these 56 million acres,

nearly 45 million acres are held in trust specifically for Indian Tribes. On these lands, the Government manages over 100,000 leases for individual Indians and Tribes. About \$500 million per year in leasing, use permits, royalties, and interest income are collected in 2,700 tribal accounts for some 250 Tribes. In total, the Government manages annually about \$3 billion in Tribal funds. Congress has delegated most of the trust functions to the Interior Department (principally, the Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians) and several custodial duties to the Treasury Department.

In the Tribal Trust cases, the Tribes allege that the Government should be ordered to prepare a “full and complete historical accounting” of the Tribes’ trust fund accounts and non-monetary trust resources and to pay damages for allegedly mismanaging them. Specifically, the Tribes claim that the Government has failed to provide an accounting of the monies that it has collected, managed, and disbursed, as well as the non-monetary trust resources that it has administered, on the Tribes’ behalf. Additionally, the Tribes claim that the Government has mismanaged the Tribes’ trust funds and non-monetary trust resources, such as timber, oil, gas, and other minerals. In the 98 cases currently pending, the Tribes claim that they are owed billions of dollars in damages.

The Tribal Trust cases are extraordinarily complex, both legally and factually. They involve records of economic activity conducted on Tribal lands for more than 100 years. Tribal lands have been and continue to be used for a wide variety of revenue-producing activities, including grazing, farming, oil and gas development, timber harvesting, hydroelectric power generation, and minerals extraction. Similarly, Tribal funds have been and continue to be collected, deposited, transferred, disbursed, and invested. These activities generate transactional documentation, which the Government must identify, collect, manage, review, and analyze, to represent the Government’s interests competently in litigation, formal alternative dispute resolution (ADR) processes, or informal settlement discussions. Thus far, ENRD has identified more than 400 million pages of documentation at locations across the country that relate or potentially relate to these 98 cases and 114 Tribes.

The Tribal Trust cases are counterparts to *Cobell v. Salazar*, which is a class-action lawsuit brought on behalf of 300,000-500,000 individual Indians demanding “full and complete historical accountings” of their individual Indian money (IIM) accounts. In December 2009, the Department of the Interior announced a settlement in *Cobell*, subject to endorsement by the U.S. District Court for the District of Columbia, and authorization by Congress. If approved, the *Cobell* settlement will resolve the plaintiffs’ claims for an historical accounting for funds that the government held in trust for individual Native Americans and resolve potential claims alleging that, over decades, the government has mismanaged millions of acres of land and millions of dollars that it holds in trust for individual Native Americans. Between the accounting claims and the trust administration claims, the plaintiff class would receive approximately \$1.4 billion through the settlement. The settlement also establishes a new land consolidation program that provides critical benefits to every party. It is important to note that the *Cobell* settlement addresses and seeks to resolve only individual Indian claims, not Tribal claims. We do not yet know what, if any, precedential impact the *Cobell* settlement may have on the Tribal Trust cases. However, of the 44 Tribal Trust cases that have been brought in the United States District Courts, 37 of them are assigned to the same judge (Judge Robertson) who presided over *Cobell*, because they have been deemed to be factually and legally similar. It is possible that judicial

involvement, and thus litigation activity, will increase substantially in the Tribal Trust cases in the foreseeable future.

Justification

While over 70 of the current Tribal Trust cases were filed after November 2005 (the majority of them were filed in November and December 2006), 25 cases were filed in or shortly after January 2002, with several filed in the 1979-2000 timeframe. Consequently, many of these early Tribal Trust cases have reached a level of procedural maturity that requires the parties to conduct active investigatory work and discovery and evaluate the issues and claims presented by the Tribes in preparation for ongoing formal or informal settlement discussions or trial. All of these efforts require extensive attorney and support staff resources as well as litigation support. At present, we have 27 Tribal Trust cases in active litigation. The remaining cases are in formal or informal settlement discussions or on appeal. We are currently projecting that six of the cases currently pending in the CFC and U.S. District Courts will go to trial in FY 2010, with several to follow in FY 2011.

We expect that the personnel resource needs and litigation support requirements in the Tribal Trust cases will increase dramatically in FYs 2010 and 2011. Thus far, even prior to the *Cobell* settlement, Judge Robertson has acted relatively quickly and efficiently in resolving several of the Tribes' claims and disposing of the Government's defenses. We project that, given the proposed settlement in *Cobell*, the judge will address, in short order, the Government's pending jurisdictional motions and proceed with full-blown active litigation in eight of the 37 cases pending before him. Given the similarity of the Tribal trust accounting claims to the one set forth in *Cobell*, ENRD foresees a high likelihood that active litigation will involve trial. Similarly, judges in the Eastern and Western Districts of Oklahoma and in the CFC have found that the Tribal trust accounting and trust mismanagement claims are subject to trial and not summary adjudication based on the Government's administrative records, and accordingly they have ordered or are projected to order the Government and various Tribes to go to trial in FYs 2010 and 2011, after costly and often lengthy fact and expert discovery. Our next Tribal Trust trial is scheduled for March 2010.

Many of the Tribes prosecuting the cases in active litigation demand judgments of hundreds of millions of dollars in damages. For instance, the Osage Nation is asserting that its claims regarding trust fund investment and oil royalty collection, between 1972 and 2000, total over \$310 million. Similarly, the Jicarilla Apache Nation contends that it has suffered over \$300 million in damages as a result of the Government's mismanagement of the Nation's trust funds, during 1972-1992.

Given this backdrop, it is imperative that the Tribal Trust cases be adequately funded, especially with respect to personnel and litigation support services, to minimize the risk of contempt proceedings, and – most importantly – to help ensure that the United States' interests are effectively represented. In FY 2011, all of these cases—regardless of whether they are in formal or informal settlement discussions or trial preparation—will have advanced to a stage requiring more resources and support. Between FY 2003 and FY 2009, ENRD has expended over 183,000 attorney hours – over 100 FTE in 7 years – on Tribal Trust case work. In FY 2009

alone, ENRD expended approximately 40,000 attorney hours (over 22 FTE) on these cases. Due to current staffing constraints, the Division's Natural Resources Section (NRS) has a limited number of attorneys available to work full-time on these cases.

The resource needs and requirements have been made more acute by some adverse court rulings in the Tribal Trust cases. For example, the United States Court of Appeals for the Federal Circuit issued a decision in a recent Tribal Trust case, *Shoshone Tribe of the Wind River Reservation v. United States*, in which the Court ruled that various Congressional appropriations riders and statutes override the statute of limitations, thereby adding many decades of transactional and other information to be examined by DOJ to prepare an adequate defense. This ruling substantially increases not only the potential monetary exposure to Tribal damages claims but also the burden and expense to the United States of having to research, analyze, prepare, and defend against the claims in litigation or settlement discussions, all of which is very resource-intensive work.

To accommodate the anticipated case requirements, based on our assessment of the anticipated FY 2011 work described above, ENRD will need 10 additional positions (8 attorneys and 2 paralegals), at a cost of \$994,000, as well as \$1.75 million for litigation support services.

Litigation support is critical to the Tribal Trust cases. The cases are extremely document-intensive. For example, in the Jicarilla Apache case, which was in ADR discussions for six years, ENRD has acquired over 8.3 million pages of transactional and other documentation necessary to evaluate settlement terms and conditions. In 2008, the Tribe decided to terminate its participation in the ADR process and undertake active litigation. The parties are currently engaging in additional fact and expert discovery relating to the first phase of the case designated for trial. In the Osage case, ENRD collected and produced over 8.2 million pages of documents to the Tribe in the first tranche of the case that went to lengthy trial. The second phase of the litigation is presently being prepared for trial, and, among other things, the parties are trafficking in at least 1.5 million pages of additional documents. ENRD's litigation support program has provided critical document and knowledge management services. The program maintains robust databases of imaged documents and permits the trial attorneys quick and efficient access to information. In addition, the litigation support program is indispensable in establishing trial-specific operations centers to assist the attorneys when the cases go to trial, which is especially important in locations outside of Washington, D.C.

It is imperative that ENRD have sufficient funding for the Tribal Trust cases to prevent huge and unnecessary monetary awards at taxpayer expense, significant negative publicity, and a public loss of confidence in the Government in general, and, in particular, the Interior and Treasury Departments.

Impact on Performance (Relationship of Increase to Strategic Goals)

Successful execution of ENRD's Tribal Trust litigation responsibilities is a critical step in achieving the Justice Department's Strategic Goal Two: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People; and, more specifically, Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters

over which the Department has jurisdiction. The financial interests of the United States in these matters, and the potential impact on the American taxpayers, are in the billions of dollars. The non-financial interests of the United States and the American people include the potential huge and unnecessary negative publicity and a general public loss of confidence in the Government and the many Executive Branch agencies involved in the Tribal Trust litigation (Interior, Treasury, Justice). As such, the requested budget enhancement will benefit not only ENRD and the Justice Department, but also numerous agencies outside of the Department.

ENRD must devote the majority of its appropriated resources to defensive work on behalf of federal agencies. When making decisions as to which cases merit funding, the Division must proceed, first and foremost, with such non-delegable, non-discretionary defensive litigation. The provision of additional resources for ENRD's Tribal Trust cases will assist the Division in responding to its increasingly onerous defensive caseload. It will also, as a result, liberate other resources to work on matters responsive to different aspects of Strategic Goal 2.7.

FUNDING

Base Funding

FY 2009 Enacted				FY 2010 President's Budget				FY 2011 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
22	18	22	\$1,939	32	25	27	\$5,239	32	25	32	\$5,239

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$110	8	\$880	\$699
Paralegal	\$57	2	\$114	\$67
Total Personnel		10	\$994	\$766

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
Automated Litigation Support	N/A	N/A	\$1,750	\$0
Total Non-Personnel	N/A	N/A	\$1,750	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	32	25	32	\$3,500	\$1,739	\$5,239
Increases	10	8	5	\$994	\$1,750	\$2,744
Grand Total	42	33	37	\$4,494	\$3,489	\$7,983

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



There are dozens of salamanders listed under the Endangered Species Act. Perhaps the most threatened is the **Texas Blind Salamander**, which is a rare cave-dwelling amphibian native only to San Marcos and Hayes counties in Texas. These salamanders grow to 4-6 inches in length and have external gills which absorb oxygen from the water. They were listed under the ESA in 1967. The Texas Blind Salamander eats shrimp, algae and other small critters which flow into its caves.

B. Enforcing the Nation's Environmental Laws

Item Name:	Enforcing the Nation's Environmental Laws
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>Environmental Enforcement Section (EES)</i> <i>Environmental Crimes Section (ECS)</i>
Component Ranking of Item:	<u>2</u> of <u>3</u>
Program Increase:	Positions <u>8</u> , FTE <u>4</u> , Litigation Support <u>\$250,000</u> , Total Dollars <u>\$958,000</u>

Description of Item

ENRD is requesting 8 positions (5 attorneys) and 4 FTE to effectively enforce the nation's civil and criminal environmental laws.

ENRD's environmental enforcement efforts are expected to increase significantly in FY 2011 in connection with six of the EPA's key initiatives: (1) improving the health of the Chesapeake Bay, (2) combating pollution from coal combustion waste, (3) cleaning up and preventing municipal sewer overflows, (4) bringing coal-fired power plants in compliance with the Clean Air Act (CAA), (5) stopping sham recycling of electronic waste, and (6) enforcing the laws to prevent illegal timber harvesting. ENRD will also continue to promote Environmental Justice through our casework, ensuring protection of the nation's air, water and land for all Americans.

Justification

Civil Clean Water Act Enforcement Efforts

The **Chesapeake Bay** is a national treasure and constitutes the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. The federal government has significant and unique assets in the Chesapeake Bay and its watershed in the form of public lands, facilities, military installations, parks, forests, monuments, and

museums. The Chesapeake Bay Program, established in Section 117 of the Clean Water Act (CWA) and operated by EPA, is regarded as a model for management of a complex ecosystem.

Despite significant efforts by federal, state, and local governments and other interested parties, water pollution in the Bay prevents the attainment of water quality standards and other goals of the CWA. Harmful pollutants come from many sources, including sewage treatment plants, urban storm-water runoff, septic systems, agricultural operations, and deposition from the air onto the waters of the Bay and the lands of the Bay watershed. To protect and restore the health of the Chesapeake Bay aquatic ecosystem, EPA's enforcement strategy aims to ensure that the most significant sources of pollution achieve compliance with environmental regulations. The agency has advised ENRD that it expects to begin referring air and water point sources for appropriate judicial enforcement action and will continue its effort to identify and prioritize point source facilities within the Chesapeake Bay watershed for judicial enforcement over a longer timeframe.

A second key priority for EPA which is expected to result in new referrals to ENRD for judicial enforcement under the CWA is pollution resulting from **Coal Combustion Waste**. Following the catastrophic release of coal combustion waste at the Tennessee Valley Authority's (TVA) Kingston Fossil Plant in Harriman, Tennessee late last year, EPA assembled a multi-media team to evaluate coal combustion waste impoundments' compliance with existing federal environmental laws. The goal of this effort will be to ensure that power generating facilities are not illegally disposing of hazardous waste in surface impoundments, not violating CWA permits, and do not present an imminent and substantial endangerment to human health or the environment. EPA's expectation is that it could begin referring a significant number of multi-media enforcement cases for judicial enforcement in 2010. Current priorities continue to generate a steady stream of enforcement referrals, many of which are unusually resource-intensive because they present extraordinarily complex scientific and technical issues.

ENRD's CWA efforts include civil enforcement actions against municipalities whose sanitary sewer systems are inadequate and result in unauthorized discharges of raw sewage into the nation's waterways. EPA's **Sanitary Sewer Overflow (SSO)** national priority strategy aims to achieve maximum compliance with environmental regulations to protect human health and the environment. This priority has produced, and continues to produce, a significant number of referrals for judicial enforcement. When releases of raw sewage from municipal sanitary sewers occur, the SSOs often pose a substantial risk to public health and the environment. The main pollutants in raw sewage from SSOs can lead to diseases that range in severity from mild gastroenteritis to life-threatening ailments, such as cholera and infectious hepatitis.

SSOs have a variety of causes, including severe weather, improper system design, equipment failures, poor management, operation and maintenance, and vandalism. EPA's empirical data indicate there are significant non-compliance problems in sanitary sewer systems with overflows. The goal of the Division's judicial enforcement is to place such systems under enforceable consent decrees to adequately address the SSOs. Negotiating these settlements is frequently a resource-intensive and arduous process because of the technical challenges attendant to fashioning injunctive relief that typically takes many years to implement and the financial

commitment required by the defendant to undertake the relief, which now commonly exceeds \$1 billion for a sizeable municipality.

Civil Clean Air Act Enforcement Efforts

The **Power Plants** family of cases continues to be one of the largest affirmative litigation initiatives in ENRD's history. The initiative consists of a group of district court enforcement actions against the owners and operators of coal-fired electric generating stations for violations of the New Source Review ("NSR") provisions of the CAA, which requires that sources of air pollution that were either newly constructed or "modified" after 1977 obtain NSR permits and install state-of-the-art pollution controls. The facilities targeted by our cases were built before 1977 and were subsequently "modified" by the utilities without seeking NSR permits or installing pollution controls. As a result, hundreds of thousands of tons of air pollutants that should have been controlled have been, and continue to be, emitted into the atmosphere, causing harm to public health and to the environment. The power plants that we have sued include the largest coal-burning utilities in the country.

Collectively, coal-burning power plants are responsible for almost 70% of the sulfur dioxide pollution and almost 30% of the nitrogen oxide pollution from stationary sources in the entire country. Our cases seek to require the defendants to install the required pollution controls and to pay civil penalties for their past violations. To date, 15 cases have been settled, one additional settlement has been lodged pending approval by a district court, five cases are in active litigation, and several cases are in pre-filing negotiations. Significantly, the Division has received an additional seven case referrals since September 2008 which it has not been able to adequately evaluate for filing because of resource constraints. This is in addition to an existing backlog of referrals that are in various stages of evaluation and pre-filing negotiations.

The litigation involved in these cases is complex, resource-intensive, and strongly contested by well-financed defendants. Additional resources for vigorous litigation are essential to securing beneficial environmental results. The stakes in these cases are high, as is well illustrated by the settlement in early 2008 of the case against *American Electric Power*. This very heavily litigated matter was the subject of a liability trial in 2006 and the statistics underscore just how intensive the litigation was – 50,000 attorney hours, 6.85 million pages of documents produced in discovery, 183 depositions of fact and expert witnesses, 517 pleadings filed in court, 40 expert witnesses and scores of face-to-face meetings with many counsel held over several days. The judge held his ruling in abeyance to give the parties a final opportunity to settle. With the court's ruling imminent, we negotiated the largest environmental settlement in history -- \$4 billion worth of pollution controls that will reduce 813,000 tons of pollution each year. Even though the parties never learned the court's decision, we could not have achieved that momentous settlement without trying the case effectively.

Criminal Environmental Enforcement Prosecution

Approximately 130,000 computers are discarded per day in the United States. These computers, and other electronic devices, contain lead, cadmium, mercury, and other toxic materials, but are not regulated as hazardous waste. Nevertheless, many consumers and

businesses recognize that the environmental impact of **improperly handled electronic waste** (“**e-waste**”) can be severe. Recently, CBS’s news program *60 Minutes* followed a container of cathode ray tubes (CRTs) from Colorado to Hong Kong in what appeared to be an illegal export of these former computer screens that contain lead and other toxic material. Similarly, the Government Accountability Office (GAO) issued a report in September 2008 explaining that their researchers, “posing as foreign buyers of broken CRTs in Hong Kong, India, Pakistan, and other countries,” found forty-three U.S. companies willing to illegally export CRTs. As governments at the federal, state, and local levels, organizations, and individuals contract with recycling companies to safely and legally deal with waste electronics, there is significant likelihood of fraud. That fraud has profound environmental impacts in global hotspots like China and Pakistan. ENRD will need to dedicate additional personnel in FY 2011 to build capacity within EPA and state environmental protection agencies to detect and refer e-waste fraud, to develop partnerships with regulators in e-waste importing countries to trace back illegally exported e-waste, and to conduct simultaneous prosecutions of e-waste fraud cases across the United States.

Another key criminal environmental effort which will be a priority for ENRD in FY 2011 is enforcing the law against the **illegal timber industry**. The illegal harvest of timber is recognized as a substantial contributor to global climate change, and is an important factor in the loss of biodiversity and social stability in developing countries. Thus, efforts to combat the traffic in illegal timber are deservedly commanding increasing international attention. In response to the growing profile and significance of this international crime, the United States has increased its assistance to other nations working on the prevention of timber theft in their own countries. Recent examples of such assistance include Memoranda of Understanding between the United States and Indonesia and between the United States and China to combat trade in illegal wood. At the same time, the European Union (EU) is working on firm proposals to increase their legal protections against the import of illegally harvested wood into EU nations, and the United Nations has brought increased resources to bear including within the U.N. Crime Commission.

There is now an opportunity to bring increased criminal enforcement into the mix of preventive measures taken by the United States. Most importantly, in May 2008, Congress amended the Lacey Act – a law initially created to prohibit the transportation of illegally captured or prohibited animals across state lines – to expand its application to plant products. Now the Lacey Act’s criminal provisions can be applied specifically to illegally sourced timber. A multi-agency group has been working for a year on the implementation and enforcement of these expanded provisions. The Environmental Crimes Section has been involved in numerous illegal logging training workshops and outreach efforts (recently in Beijing, Jakarta, Manila, Vienna, and Budapest) and is cooperating in international efforts to build increased enforcement capacity.

Still, there remains a need for training, international coordination and partnership concerning illegal timber importation, which is beyond our present capacity. There is also a need to prosecute individuals and corporate entities engaged in illegal timber harvesting activities. ENRD specifically plans to dedicate additional personnel resources to the following illegal logging activities in FY 2011: (1) the investigation, prosecution and prevention of the illegal importation of timber products into the United States; (2) the investigation, prosecution

and prevention of illegal logging domestically; and (3) capacity-building for federal, state and local prosecutors and investigators, as well as for foreign cooperating law enforcement personnel.

Impact on Performance (Relationship of Increase to Strategic Goals)

Successful execution of ENRD's civil and criminal environmental enforcement litigation is a critical step in achieving the Justice Department's Strategic Goal Two: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People; and, more specifically, Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction. The objective of the United States in the above-described, as well as other, environmental enforcement cases is to achieve a direct and substantial improvement to public health and the environment. This objective is consistent and supportive of the President's stated agenda, to "close the carbon loophole and crack down on polluters."

The personnel and litigation support requested under this civil and criminal environmental enforcement initiative will provide ENRD with the resources needed to effectively address all aspects of DOJ Strategic Objective 2.7.

FUNDING

Base Funding

FY 2009 Enacted				FY 2010 President's Budget				FY 2011 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
0	0	0	\$0	4	3	3	\$900	4	3	4	\$900

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$110	5	\$550	\$437
Paralegal	\$57	2	\$115	\$67
Clerical	\$43	1	\$43	\$33
Total Personnel		8	\$708	\$537

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
Automated Litigation Support	N/A	N/A	\$250	\$0
Total Non-Personnel	N/A	N/A	\$250	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	4	3	4	\$643	\$257	\$900
Increases	8	5	4	\$708	\$250	\$958
Grand Total	12	8	8	\$1,351	\$507	\$1,858

ENRD in the Spotlight: Protecting and Defending the Endangered Species Act (ESA)



The **Sierra Nevada Big-Horned Sheep** was listed under the Endangered Species Act in 1998. Immediate relatives of the Big Horn are found in Siberia, indicating the species likely migrated over a land bridge in the Bering Strait between Alaska and Russia thousands of years ago. Although its population was once estimated at over 2 million, there are now only several thousand Sierra Nevada Big-Horned Sheep in existence. Both males (rams) and females (ewes) have horns, although it is the male's large curved horns which give the sheep its name.

C. E-Discovery

Item Name:	E-Discovery
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7</u> : Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Programs:	<i>Appellate Section (APP)</i> <i>Environmental Defense Section (EDS)</i> <i>Environmental Enforcement Section (EES)</i> <i>Environmental Crimes Section (ECS)</i> <i>Executive Office (EO)</i> <i>Indian Resources Section (IRS)</i> <i>Land Acquisition Section (LAS)</i> <i>Law and Policy Section (LPS)</i> <i>Natural Resources Section (NRS)</i> <i>Wildlife and Marine Resources Section (WMRS)</i>
Component Ranking of Item:	<u>3</u> of <u>3</u>
Program Increase:	Positions <u>9</u> , FTE <u>5</u> Total Dollars <u>\$1,000,000</u>

Description of Item

ENRD is requesting 9 positions (2 attorneys), 5 FTEs, and \$1,000,000 to address E-Discovery needs.

The Department has undertaken a thorough review of its approach to handling document discovery in civil litigation on behalf of DOJ's clients. The review investigated how E-Discovery was handled in the private sector. Based on interviews with E-Discovery specialists from large, private law firms, it appears that the private sector is adapting to the demands of electronic discovery by developing a cadre of lawyers with sophisticated technical expertise who perform a number of functions including: analyzing and providing advice on e-discovery and electronic document/data production issues; facilitating conversations between litigating components and client agency technical staff; participating in, or monitoring, Rule 26 conferences; and overseeing non-attorney support staff who process and handle discovery data. The key to effectively addressing complex E-Discovery challenges is combining technical and legal expertise.

To address the need for this expertise in E-Discovery matters, the Environment and Natural Resources Division (ENRD) requests an additional 2 attorney positions, 1 FTE and \$402,000.

The Department's review also found that the civil litigating components have insufficient support staff to complement multiple tiers of E-Discovery expertise. Existing support staff focus primarily on case administration. As a result, they are not able to devote sufficient time to support the substantive casework demands of attorney and paralegal staff. When attorneys are able to use support staff expertise early in a case, the support staff's advice can create significant gains in efficiency and reduce the likelihood of errors. For example, some data formats encountered in E-Discovery are easier to process than others; and an attorney can potentially save hundreds of hours of labor by requesting the information in a preferred format and following specified, pre-determined processes. These issues are not just matters of efficiency; they also serve to protect the client's interests.

It is difficult to quantify the number of FTE currently devoted to civil E-Discovery support staff functions. Many personnel identified as "litigation support staff" are dedicated to trial preparation or criminal cases rather than civil E-Discovery; other staff are cross-designated to handle E-Discovery functions on a collateral basis. Nonetheless, our best analysis of attorney-to-support staff ratios suggests that the Department's civil litigating components all have more than a 20:1 ratio of attorneys to E-Discovery support staff. According to the Department's E-Discovery Workgroup, such a ratio is too high to provide sufficient E-Discovery support staff services.

To address the need for more support staff expertise in E-Discovery matters, ENRD requests an additional 7 support positions, 4 FTE, and \$598,000.

FUNDING

Base Funding

FY 2009 Enacted				FY 2010 President's Budget				FY 2011 Current Services			
Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)	Pos	Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Attorney	\$201	2	\$402	\$241
E-Discovery Specialist	\$85	7	\$598	\$358
Total Personnel		9	\$1,000	\$589

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
Automated Litigation Support	N/A	N/A	\$0	\$0
Total Non-Personnel	N/A	N/A	\$0	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	0	0	0	\$0	\$0	\$0
Increases	9	2	5	\$1,000	\$0	\$1,000
Grand Total	9	2	5	\$1,000	\$0	\$1,000

VII. Program Offsets by Item

A. Travel

Item Name:	Department of Justice Travel Offset
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.7:</u> Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.
Organizational Program:	<i>All Program Areas</i>
Component Ranking of Item:	<u>1</u> of <u>1</u>
Program Decrease:	Positions <u>0</u> , FTE <u>0</u> , Total Dollars <u>\$130,000</u>

Description of Item

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For ENRD, travel or other management efficiencies will result in offsets of \$130,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.

FUNDING

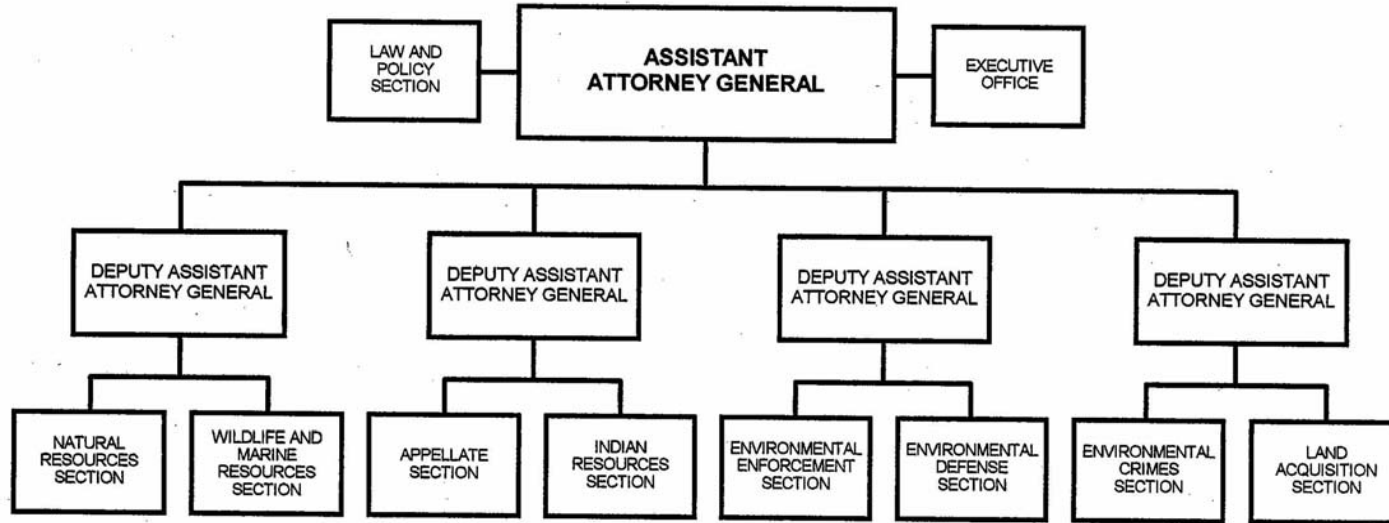
Total Non-Personnel Decrease Cost Summary

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Grand Total	0	0	0	\$0	\$130	\$130

VIII. Exhibits

A. Organizational Chart

ENVIRONMENT AND NATURAL RESOURCES DIVISION



Approved by:


ALBERTO R. MORALES
Attorney General

Date:

2-14-06

B. Summary of Requirements

Summary of Requirements
Environment & Natural Resources Division
Salaries and Expenses
(Dollars in Thousands)

	FY 2011 Request		
	Perm. Pos.	FTE	Amount
2009 Enacted (with Rescissions, direct only)	445	499	103,093
2009 Supplementals			
Total 2009 Enacted (with Rescissions and Supplementals)	445	499	103,093
2010 Enacted (with Rescissions, direct only)	459	507	109,785
2010 Supplementals			
Total 2010 Enacted (with Rescissions and Supplementals)	459	507	109,785
Technical Adjustments			
Adjustments to Base			
Increases:			
2011 pay raise (1.4%)			818
2010 pay raise annualization (2.0%)			488
Annualization of 2010 positions (FTE)		6	
Annualization of 2010 positions (dollars)			1,332
1.3% Increase in FERS Contributions			287
Employees Compensation Fund			30
Retirement			123
Health Insurance			226
GSA Rent			18
Moves (Lease Expirations)			1,551
Rental Payments - Non-GSA			7
DHS Security Charge			18
WCF Rate Adjustment			55
Subtotal Increases	0	6	4,953
Total Adjustments to Base	0	6	4,953
Total Adjustments to Base and Technical Adjustments	0	6	4,953
2011 Current Services	459	513	114,738
Program Changes			
Increases:			
Tribal Trust Litigation	10	5	2,744
Enforcing the Nation's Environmental Laws	8	4	958
E-Discovery	9	5	1,000
Subtotal, Program Increases	27	14	4,702
Decreases:			
Adjust Travel Expenditures			(130)
Subtotal, Program Decreases			(130)
Total Program Changes	27	14	4,572
2011 Total Request	486	527	\$119,310
2010 - 2011 Total Change	27	20	9,525

Exhibit B

B. Summary of Requirements (Cont.)

Summary of Requirements
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

	2009 Appropriation Enacted w/Rescissions and Supplementals			2010 Enacted			2011 Adjustments to Base and Technical Adjustments			2011 Current Services			2011 Increases			2011 Offsets			2011 Request		
Estimates by budget activity	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	401	449	92,784	413	456	98,807	6	4,953		413	462	103,760	27	14	4,702	0	0	(130)	440	476	108,332
Criminal Litigation	45	50	10,309	46	51	10,978	0	0		46	51	10,978	0	0	0	0	0		46	51	10,978
Total	445	499	\$103,093	459	507	\$109,785	0	6	\$4,953	459	513	\$114,738	27	14	\$4,702	0	0	(\$130)	486	527	\$119,310
Reimbursable FTE	184			184						184									184		
Total FTE	683			691			6			697			14			0			711		
Other FTE:																					
LEAP																					
Overtime																					
Total Comp. FTE	683			691			6			697			14			0			711		

**See Exhibit F for crosswalk for Enacted without rescission to Enacted with rescissions for FY 2009.*

C. Program Increases/Offsets by Decision Unit

FY 2011 Program Increases/Offsets By Decision Unit
Environment & Natural Resources Division
(Dollars in Thousands)

Program Increases	Location of Description by Decision Unit					Total Increases
		Pos.	Agt./Atty.	FTE	Amount	
Tribal Trust Litigation	Civil Litigation	10	8	5	2,744	2,744
Enforcing the Nation's Environmental Laws	Civil Litigation	8	5	4	958	958
E-Discovery	Civil Litigation	9	2	5	1,000	1,000
Total Program Increases		27	15	14	\$4,702	\$4,702
Program Offsets	Location of Description by Decision Unit					Total Offsets
		Pos.	Agt./Atty.	FTE	Amount	
Adjust Travel Expenditures	Civil Litigation	0	0	0	(130)	(130)
Total Program Offsets		0	0	0	(\$130)	(\$130)

D. Resources by Department of Justice Strategic Goal and Objective

Resources by Department of Justice Strategic Goal/Objective Environment & Natural Resources Division

(Dollars in Thousands)

Strategic Goal and Strategic Objective	2009 Appropriation Enacted w/Rescissions and Supplementals		2010 Enacted		2011 Current Services		2011				2011 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People 2.1 Strengthen partnerships for safer communities and enhance the Nation's capacity to prevent, solve, and control crime 2.2 Reduce the threat, incidence, and prevalence of violent crime 2.3 Prevent, suppress, and intervene in crimes against children 2.4 Reduce the threat, trafficking, use, and related violence of illegal drugs 2.5 Combat public and corporate corruption, fraud, economic crime, and cybercrime 2.6 Uphold the civil and Constitutional rights of all Americans 2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction 2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system Subtotal, Goal 2	683	103,093	691	109,785	697	114,738	14	4,702	0	(130)	711	119,310
	683	103,093	691	109,785	697	114,738	14	4,702	0	(130)	711	119,310
GRAND TOTAL	683	\$103,093	691	\$109,785	697	\$114,738	14	\$4,702	0	(\$130)	711	\$119,310

E. Justification for Base Adjustments

Justification for Base Adjustments Environment & Natural Resources Division

Increases

2011 pay raise: This request provides for a proposed 1.4 percent pay raise to be effective in January of 2011 (This percentage is likely to change as the budget formulation process progresses.) This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$818,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$608,756 for pay and \$209,244 for benefits).

Annualization of 2010 pay raise: This pay annualization represents first quarter amounts (October through December) of the 2010 pay increase of 2.0 percent included in the 2010 President's Budget. The amount requested \$488,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$363,170 for pay and \$124,830 for benefits).

Annualization of additional positions approved in 2010: This provides for the annualization of 6 additional positions. Annualization of new positions extends to 3 years to provide for entry level funding in the first year with a 2-year progression to the journey man level. For 2011, this request includes an increase of \$1,332,000 for full-year payroll costs associated with these additional positions.

	2009 Increases (\$000)	Annualization Required for 2011 (\$000)	2010 Increases (\$000)	Annualization Required for 2011 (\$000)
Annual salary rate of 6 new positions			2204	2664
Less lapse (50 %)			1102	1332
Net Compensation	0	0	1102	1332
Associated employee benefits			289	
Travel			71	
Transportation of Things			4	
Communications/Utilities			74	
Printing/Reproduction			6	
Other Contractual Services:				
25.2 Other Services			2318	
25.3 Purchase of Goods and Services from Government Accts.				
25.4 Operation and Maintenance of Facilities				
25.6 Medical Care				
Supplies and Materials			27	
Equipment			309	
TOTAL COSTS SUBJECT TO ANNUALIZATION	0	0	4200	1332

Exhibit E

E. Justification for Base Adjustments (Cont.)

FERS Regular/1.3% Increase in FERS Contributions: Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of \$287,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Employees Compensation Fund: The \$30,000 increase reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

Retirement: Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on OPM government-wide estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 3 percent per year. The requested increase of \$123,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance: Effective January 2011, this component's contribution to Federal employees' health insurance premiums increased by 6.9 percent. Applied against the 2010 estimate of \$3,288,000, the additional amount required is \$226,000.

General Services Administration (GSA) Rent: GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$18,000 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective in FY 2011 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provided data on the rate increases.

Moves (Lease Expirations): GSA requires all agencies to pay relocation costs associated with lease expirations. This request provides for the costs associated with new office relocations caused by the expiration of leases in FY 2011. Funding of \$1,551,000 is required for this account.

E. Justification for Base Adjustments (Cont.)

Rental Payments - Non-GSA: The \$7,000 increase reflects payments for direct leases for non-GSA parking.

DHS Security Charges: The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$18,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.

WCF Rate Adjustment: The Department's Working Capital Fund (WCF) provides Department components with centralized administrative and infrastructure support services. The WCF is a cost effective mechanism that eliminates duplication of effort and promotes economies of scale through consolidation and centralization. Inflationary adjustments are required to account for pay raises and cost of living increases, contractual changes, and information technology maintenance and technology refreshment upgrades. Funding of \$55,000 is required for this account.

F. Crosswalk of 2009 Availability

Crosswalk of 2009 Availability Environment & Natural Resources Division Salaries and Expenses (Dollars in Thousands)

Decision Unit	FY 2009 Enacted Without Rescissions			Reprogrammings / Transfers*			Reallocations**			2009 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	401	449	92,784			350			500	401	449	93,634
Criminal Litigation	45	50	10,309							45	50	10,309
TOTAL	445	499	\$103,093	0	0	\$350	0	0	\$500	445	499	\$103,943
Reimbursable FTE		184									184	
Total FTE		683			0			0			683	
Other FTE												
LEAP											0	
Overtime											0	
Total Compensable FTE		683			0			0			683	

*Transfers - Funding of \$350,000 was reprogrammed from OSG to ENRD to cover a shortfall in tax escalation charges relating to the Patrick Henry Building lease.

**Reallocations - Funding of \$500,000 was distributed from GLA's ALS account to ENRD's ALS account.

G. Crosswalk of 2010 Availability

Crosswalk of 2010 Availability
 Environment & Natural Resources Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	2010 Enacted			2010 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	413	456	98,807	413	456	98,807
Criminal Litigation	46	51	10,978	46	51	10,978
TOTAL	459	507	109,785	459	507	\$109,785
Reimbursable FTE		184			184	
Total FTE		691			691	
Other FTE						
LEAP					0	
Overtime					0	
Total Compensable FTE		691			691	

H. Summary of Reimbursable Resources

Summary of Reimbursable Resources

Environment & Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

Collections by Source	2009 Actual			2010 Enacted			2011 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Department of Agriculture			1,917			2,000			2,000	0	0	0
Department of Commerce			26			14			14	0	0	0
Department of Defense			999			1,073			1,073	0	0	0
Department of Energy			20			15			15	0	0	0
Department of Homeland Security			218			218			218	0	0	0
Department of Interior			1,631			2,500			2,500	0	0	0
Department of Justice			6,884			6,900			6,000	0	0	(900)
Department of State			31			70			70	0	0	0
Department of Treasury			35			10			10	0	0	0
Environmental Protection Agency		184	28,559		184	27,470		184	27,370	0	0	(100)
Federal Trade Commission			828			850			850	0	0	0
Securities and Exchange Commission			4,832			3,800			3,800	0	0	0
Others			20			80			80	0	0	0
Budgetary Resources:	0	184	\$46,000	0	184	\$45,000	0	184	\$44,000	0	0	(\$1,000)

I. Detail of Permanent Positions by Category

Detail of Permanent Positions by Category

Environment & Natural Resources Division

Salaries and Expenses

Category	2009 Enacted w/Rescissions and Supplementals		2010 Enacted		2011 Request				
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Total Pr. Changes	Total Authorized	Total Reimbursable
Intelligence Series (132)	0	0	0	0	0	0	0	0	0
Personnel Management (200-299)	8	1	8	1	0	0	0	8	1
Clerical and Office Services (300-399)	55	35	55	35	0	1	1	56	35
Accounting and Budget (500-599)	7	0	7	0	0	0	0	7	0
Attorneys (905)	313	110	323	110	0	15	15	338	110
Paralegals / Other Law (900-998)	43	38	47	38	0	4	4	51	38
Information & Arts (1000-1099)	0	0	0	0	0	0	0	0	0
Business & Industry (1100-1199)	5	0	5	0	0	0	0	5	0
Library (1400-1499)	0	0	0	0	0	0	0	0	0
Equipment/Facilities Services (1600-1699)	0	0	0	0	0	0	0	0	0
Miscellaneous Inspectors Series (1802)	0	0	0	0	0	0	0	0	0
Criminal Investigative Series (1811)	0	0	0	0	0	0	0	0	0
Supply Services (2000-2099)	0	0	0	0	0	0	0	0	0
Motor Vehicle Operations (5703)	0	0	0	0	0	0	0	0	0
Information Technology Mgmt (2210)	14	0	14	0	0	7	7	21	0
Security Specialists (080)	0	0	0	0	0	0	0	0	0
Miscellaneous Operations (010-099)	0	0	0	0	0	0	0	0	0
Total	445	184	459	184	0	27	27	486	184
Headquarters (Washington, D.C.)	394	163	408	163	0	27	27	435	163
U.S. Field	51	21	51	21	0	0	0	51	21
Foreign Field	0	0	0	0	0	0	0	0	0
Total	445	184	459	184	0	27	27	486	184

* Distribution of positions among categories will vary from previously submitted schedules. The distribution has been adjusted to reflect current operations, however total appropriated and reimbursable positions have not changed.

Exhibit I

J. Financial Analysis of Program Changes

Financial Analysis of Program Changes

Environment & Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

	Tribal Trust Litigation		Enforcing the Nation's Environmental Laws		E-Discovery		Program Changes	
Grades:	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
GS-15	8	880	5	550	2	402	15	1,832
GS-14					7	598	7	598
GS-7			1	43			1	43
GS-9	2	114	2	115			4	229
Total positions & annual amount	10	994	8	708	9	1,000	27	2,702
Lapse (-)	(5)	(497)	(4)	(354)	(5)	(500)	(14)	(1,351)
Other personnel compensation								
Total FTE & personnel compensation	5	497	4	354	5	500	14	1,351
Personnel benefits		127		91		128	0	346
Travel and transportation of persons		29		24		26	0	79
Transportation of things		2		0		0	0	2
Communication, rents, and utilities		27		22		25	0	74
Printing		1		1		1	0	3
Other services		1,823		278		107	0	2,208
Supplies and materials		9		7		8	0	24
Equipment		227		182		205	0	614
Total, 2011 program changes requested	5	\$2,744	4	\$958	5	\$1,000	14	\$4,702

Exhibit J

K. Summary of Requirements by Grade

Summary of Requirements by Grade Environment & Natural Resources Division Salaries and Expenses

Grades and Salary Ranges	2009 Enacted w/Rescissions and		2010 Enacted		2011 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
SES, \$119,554 - 179,700	18		18		18		0	
GS-15, \$123,758 - 155,500	258		268		283		15	
GS-14, \$105,211 - 136,771	29		29		36		7	
GS-13, \$89,033 - 115,742	24		24		24		0	
GS-12, \$74,872 - 97,333	19		19		19		0	
GS-11, \$62,467 - 81,204	26		26		26		0	
GS-10, \$56,857 - 73,917	2		2		2		0	
GS-9, \$51,630 - 67,114	24		28		32		4	
GS-8, \$46,745 - 60,765	19		19		19		0	
GS-7, \$42,209 - 54,875	17		17		18		1	
GS-6, \$37,983 - 49,375	1		1		1		0	
GS-5, \$34,075 - 44,293	1		1		1		0	
GS-4, \$30,456 - 39,590	4		4		4		0	
GS-3, \$27,130 - 35,269	3		3		3		0	
GS-2, \$24,865 - 31,292	0		0		0		0	
GS-1, \$22,115 - 27,663	0		0		0		0	
Total, appropriated positions	445		459		486		27	
Average SES Salary		172,155		\$177,492		\$181,397		
Average GS Salary		112,088		\$115,563		\$118,105		
Average GS Grade		GS-14/5		GS-14/5		GS-14/5		

L. Summary of Requirements by Object Class

Summary of Requirements by Object Class
Environment & Natural Resources Division
Salaries and Expenses
(Dollars in Thousands)

Object Classes	2009 Actuals		2010 Enacted		2011 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	439	53,057	444	56,432	464	60,738	20	4,306
11.3 Other than full-time permanent	105	8,246	63	7,233	63	7,233	0	0
11.5 Total, Other personnel compensation	0	353	0	1,145	0	1,145	0	0
Overtime							0	0
Other Compensation							0	0
11.8 Special personal services payments		266		186		186	0	0
Total	544	61,922	507	64,996	527	69,302	20	4,306
Other Object Classes:								
12.0 Personnel benefits		15,911		16,214		16,563		349
13.0 Unemployment		0		12		12		0
21.0 Travel and transportation of persons		2,767		2,874		2,953		79
22.0 Transportation of things		311		342		345		2
23.1 CSA rent		11,888		10,826		10,844		18
23.2 Moving/Lease Expirations/Contract Parking		0		0		1,558		1,558
23.3 Comm., util., & other misc. charges		1,495		1,618		1,618		0
24.0 Printing and reproduction		112		94		98		3
25.1 Advisory and assistance services		517		605		605		0
25.2 Other services		6,616		9,323		11,876		2,553
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		1,143		1,081		1,099		18
25.4 Operation and maintenance of facilities								0
25.5 Research and development contracts								0
25.7 Operation and maintenance of equipment								0
26.0 Supplies and materials		652		739		763		24
31.0 Equipment		247		1,060		1,674		614
42.0 Insurance Claims & Indemnities		5						
Total obligations		\$103,586		\$109,785		\$119,310	20	\$9,525
Unobligated balance, start of year								
Transfers to other accounts								
Transfers from other accounts		(850)						
Unobligated balance expiring		357						
Unobligated balance, end of year								
Recoveries of prior year obligations								
Total DIRECT requirements		103,093		109,785		119,310		
Reimbursable FTE:	119		184		184			
Full-time permanent							0	0
23.1 CSA rent (Reimbursable)		2,386		2,755		2,694		(61)
25.3 DHS Security (Reimbursable)		39		44		44		0

Exhibit L

N. Adjustments to Base By Decision Unit

2011 Adjustments to Base By Decision Unit Environment & Natural Resources Division (Dollars in Thousands)

Adjustments to Base	Pos.	Agt./Atty.	FTE	Amount
2011 Pay Raise (1.4%)				818
2010 Pay Raise Annualization (2.0%)				488
Annualization of 2010 positions (FTE)			6	
Annualization of 2010 positions (dollars)				1,332
1.3% Increase in FERS Contributions				287
Employees Compensation Fund				30
Retirement				123
Health Insurance				226
GSA Rent				18
Moves (Lease Expirations)				1,551
Rental Payments - Non-GSA				7
DHS Security Charge				18
WCF Rate Adjustment				55
Total ATBs			6	\$4,953

Exhibit N